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APPENDIX I	**CROSS REFERENCE: LOCATION OF RULE SECTION IN CHAPTER 23 TO NEW LOCATION IN CHAPTER 25 OR CHAPTER 26.**
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APPENDIX III	**RECORDS, REPORTS, AND OTHER INFORMATION THAT MAY BE REQUIRED.**

§26.1. Purpose and Scope of Rules.

(a) **Mission of the Public Utility Commission of Texas (PUC).** The mission of the PUC is to assure the availability of safe, reliable, high quality services that meet the needs of all Texans at just and reasonable rates. To accomplish this mission, the PUC shall regulate electric and telecommunications utilities as required while facilitating competition, operation of the free market, and customer choice.

(b) This chapter is intended to establish a comprehensive system to accomplish the mission of the PUC and to establish the rights and responsibilities of both the utility service providers and the consumer. This chapter shall be given a fair and impartial construction to obtain these objectives and shall be applied uniformly regardless of race, nationality, color, religion, sex, or marital status.

§26.3. Severability Clause.

The adoption of this chapter will in no way preclude the Public Utility Commission of Texas from altering or amending any sections of this chapter in whole or in part, or from requiring any other or additional service, equipment, facility, or standard, either upon complaint or upon its own motion or upon application of any utility. Furthermore, this chapter will not relieve in any way a utility or customer from any of its duties under the laws of this state or the United States. If any provision of this chapter is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are declared to be severable. This chapter shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the commission or the substantive rights of any person. The commission may make exceptions to this chapter for good cause.

§26.4. Statement of Nondiscrimination.

(a) No telecommunications provider shall discriminate on the basis of race, nationality, color, religion, sex, marital status, income level, or source of income.

(b) No telecommunications provider shall unreasonably discriminate on the basis of geographic location.

(c) Nothing in this section shall be construed to abridge the rights of low-income customers to receive benefits through pending or operating programs in effect as of May 25, 1999.

§26.5. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context indicates otherwise:

(1) **Access customer** -- Any user of access services which are obtained from a certificated telecommunications utility (CTU).

(2) **Access services** -- CTU services which provide connections for or are related to the origination or termination of intrastate telecommunications services that are generally, but not limited to, interexchange services.

(3) **Administrative review** -- A process under which an application may be approved without a formal hearing.

(4) **Affected person** --
- (A) a public utility affected by an action of a regulatory authority;
- (B) a person whose utility service or rates are affected by a proceeding before a regulatory authority; or
- (C) a person who:
  - (i) is a competitor of a public utility with respect to a service performed by the utility; or
  - (ii) wants to enter into competition with a public utility.

(5) **Affiliate** --
- (A) a person who directly or indirectly owns or holds at least 5.0% of the voting securities of a public utility;
- (B) a person in a chain of successive ownership of at least 5.0% of the voting securities of a public utility;
- (C) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by a public utility;
- (D) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by:
  - (i) a person who directly or indirectly owns or controls at least 5.0% of the voting securities of a public utility; or
  - (ii) a person in a chain of successive ownership of at least 5.0% of the voting securities of a public utility;
- (E) a person who is an officer or director of a public utility or of a corporation in a chain of successive ownership of at least 5.0% of the voting securities of a public utility; or
- (F) a person determined to be an affiliate under Public Utility Regulatory Act §11.006.

(6) **Aggregate customer proprietary network information (CPNI)** -- A configuration of customer proprietary network information that has been collected by a telecommunications utility and organized such that none of the information will identify an individual customer.

(7) **Alternate 9-1-1 routing** -- The routing of 9-1-1 calls to a designated alternate location if all dedicated 9-1-1 trunks to a primary public safety answering point are busy or out of service.

(8) **Assumed name** -- Has the meaning assigned by Texas Business and Commerce Code, §36.10.

(9) **Automatic dial announcing device (ADAD)** -- Any automated equipment used for telephone solicitation or collection that:
- (A) is capable of storing numbers to be called, or has a random or sequential number generator capable of producing numbers to be called; and
- (B) alone or in conjunction with other equipment, can convey a prerecorded or synthesized voice message to the number called without the use of a live operator.

(10) **Automatic location identification (ALI)** -- The automatic display at a public safety answering point of a caller's telephone number, the address/location of the telephone number, and supplementary emergency services information for the location from which a call originates.

(11) **Automatic number identification (ANI)** -- The telephone number associated with an access line, connection, or station from which a call originates that is automatically transmitted by the local switching system to an interexchange or other communications carrier or to the operator of a 9-1-1 system.

(12) **Base rate area** -- A specific area within an exchange area, as set forth in the dominant certificated telecommunications utilities' tariffs, maps or descriptions, wherein local exchange service is furnished at uniform rates without extra mileage charges.

(13) **Basic local telecommunications service** -- Flat rate residential and business local exchange telephone service, including primary directory listings; tone dialing service; access to operator services; access to directory assistance services; access to 911 service where provided by a local authority or dual party relay service; the ability to report service problems seven days a week; lifeline services; and any other service the commission, after a hearing, determines should be included in basic local telecommunications service.

(14) **Basic network services (BNS)** -- Those services identified in Public Utility Regulatory Act §58.051.

(15) **Baud** -- Unit of signaling speed reflecting the number of discrete conditions or signal elements transmitted per second.

(16) **Bellcore** -- Bell Communications Research, Inc.

(17) **Billing agent** -- Any entity that submits charges to a billing telecommunications utility on behalf of itself or any service provider.

(18) **Billing telecommunications utility** -- Any telecommunications provider, as defined in the Public Utility Regulatory Act §51.002 that issues a bill directly to a customer for any telecommunications product or service.

(19) **Bit Error Ratio (BER)** -- The ratio of the number of bits received in error to the total number of bits transmitted in a given time interval.

(20) **Bit Rate** -- The rate at which data bits are transmitted over a communications path, normally expressed in bits per second.

(21) **Bona fide request** -- A written request to an incumbent local exchange company (ILEC) from a CTU or an enhanced service provider, requesting that the ILEC unbundle its network/services to the extent ordered by the Federal Communications Commission. A bona fide request indicates an intent to purchase the service subject to the purchaser being able to obtain acceptable rates, terms, and conditions.

(22) **Business service** -- A telecommunications service provided a customer where the use is primarily of a business, professional, institutional or otherwise occupational nature.

(23) **Busy hour** -- The clock hour each day during which the greatest usage occurs.

(24) **Busy season** -- That period of the year during which the greatest volume of traffic is handled in a switching office.

(25) **Call aggregator** -- Any person or entity that owns or otherwise controls telephones intended to be utilized by the public, which control is evidenced by the authority to post notices on and/or unblock access at the telephone.

(26) **Call splashing** -- Call transferring (whether caller-requested or operator service provider-initiated) that results in a call being rated and/or billed from a point different from that where the call originated.

(27) **Call transferring** -- Handing off a call from one operator service provider (OSP) to another OSP.

(28) **Caller identification materials (caller ID materials)** -- Any advertisements, educational materials, training materials, audio and video marketing devices, and any information disseminated about caller ID services.

(29) **Caller identification service (caller ID service)** -- A service offered by a telecommunications provider that provides calling party information to a device capable of displaying the information.

(30) **Calling area** -- The area within which telecommunications service is furnished to customers under a specific schedule of exchange rates. A "local" calling area may include more than one exchange area.

(31) **Calling party information --**

(A) the telephone listing number and/or name of the customer from whose telephone instrument a telephone number is dialed; or

(B) other information that may be used to identify the specific originating number or originating location of a wire or electronic communication transmitted by a telephone instrument.

(32) **Capitalization** -- Long-term debt plus total equity.

(33) **Carrier of choice** -- An option that allows an individual to choose an interexchange carrier for long distance calls made through Telecommunications Relay Service.

(34) **Carrier-initiated change** -- A change in the telecommunications utility serving a customer that was initiated by the telecommunications utility to which the customer is changed, whether the switch is made because a customer did or did not respond to direct mail solicitation, telemarketing, or other actions initiated by the carrier.

(35) **Central office** -- A switching unit in a telecommunications system which provides service to the general public, having the necessary equipment and operating arrangements for terminating and interconnecting customer lines and trunks or trunks only.

(36) **Census block group (CBG)** -- A United States Census Bureau geographic designation that generally contains between 250 and 550 housing units.

(37) **Certificated service area** -- The geographic area within which a company has been authorized to provide basic local telecommunications services pursuant to a certificate of convenience and necessity (CCN), a certificate of operating authority (COA), or a service provider certificate of operating authority (SPCOA) issued by the commission.

(38) **Certificated telecommunications utility** -- A telecommunications utility that has been granted either a CCN, a COA, or a SPCOA.

(39) **Class of service or customer class** -- A description of utility service provided to a customer which denotes such characteristics as nature of use (business or residential) or type of rate (flat rate or message rate). Classes may be further subdivided into grades, denoting individual or multiparty line or denoting quality of service.

(40) **Commercial mobile radio service (CMRS)** --

(A) As defined in 47 C.F.R. §20.3, a mobile service that is:

(i) provided for profit with, i.e., the intent of receiving compensation or monetary gain;

(ii) an interconnected service; and

(iii) available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public; or

(B) the functional equivalent of such a mobile service described in subparagraph (A) of this paragraph.

(41) **Commission** -- The Public Utility Commission of Texas.

(42) **Commission on State Emergency Communications (CSEC) --** The state commission with the responsibilities and authority as specified in Texas Health and Safety Code, Chapter 771.

(43) **Competitive exchange service** -- Any of the following services, when provided on an inter- or intrastate basis within an exchange area: central office based PBX-type services for systems of 75 stations or more; billing and collection services; high speed private line services of 1.544 megabits or greater; customized services; private line and virtual private line services; resold or shared local exchange telephone services if permitted by tariff; dark fiber services; non-voice data transmission service when offered as a separate service and not as a component of basic local telecommunications service; dedicated or virtually dedicated access services; services for which a local exchange company has been granted authority to engage in pricing flexibility pursuant to §26.211 of this title (relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges); any service initially provided within an exchange after October 26, 1992, if first provided by an entity other than the incumbent local exchange company (companies) certificated to provide service within that exchange; and any other service the commission declares is not local exchange telephone service.

(44) **Competitive services (CS)** -- Those services as defined in Public Utility Regulatory Act §58.151, and any other service the commission subsequently categorizes as a competitive service.

(45) **Completed call** -- A call that is answered by the called party.

(46) **Complex service** -- The provision of a circuit requiring special treatment, special equipment, or special engineering design, including but not limited to private lines, WATS, PBX trunks, rotary lines, and special assemblies.

(47) **Consumer good or service** --

(A) Real property or tangible or intangible personal property that is normally used for personal, family, or household purposes, including personal property intended to be attached to or installed in any real property;

(B) A cemetery lot;

(C) A time-share estate; or

(D) A service related to real or personal property.

(48) **Consumer telephone call** -- An unsolicited call made to a residential telephone number to:

(A) solicit a sale of a consumer good or service;

(B) solicit an extension of credit for a consumer good or service; or

(C) obtain information that will or may be used to directly solicit a sale of a consumer good or service or to extend credit for the sale.

(49) **Cooperative** -- An incumbent local exchange company that is a cooperative corporation.

(50) **Cooperative corporation** --

(A) An electric cooperative corporation organized and operating under the Electric Cooperative Corporation Act, Texas Utilities Code Annotated, Chapter 161, or a predecessor statute to Chapter 161 and operating under that chapter; or

(B) A telephone cooperative corporation organized under the Telephone Cooperative Act, Texas Utilities Code, Chapter 162, or a predecessor statute to Chapter 162 and operating under that chapter.

(51) **Corporate name** -- Has the meaning assigned by Texas Business Corporation Act, Article §2.05.

(52) **Corporation** -- A domestic or foreign corporation, joint-stock company, or association, and each lessee, assignee, trustee, receiver or other successor in interest of the corporation, company, or association, that has any of the powers or privileges of a corporation not possessed by an individual or partnership. The term does not include a municipal corporation, except as expressly provided by the Public Utility Regulatory Act.

(53) **Custom calling-type services** -- Call management services available from a central office switching system including, but not limited to, call forwarding, call waiting, caller ID, or automatic recall.

(54) **Customer access line** -- A unit of measurement representing a telecommunications circuit or, in the case of ISDN, a telecommunications channel designated for a particular customer. One customer access line shall be counted for each circuit which is capable of generating usage on the line side of the switched network or a private line circuit, regardless of the quantity or ownership of customer premises equipment connected to each circuit. In the case of multiparty lines, each party shall be counted as a separate customer access line.

(55) **Customer-initiated change** -- A change in the telecommunications utility serving a customer that is initiated by the customer and is not the result of direct mail solicitation, telemarketing, or other actions initiated by the carrier.

(56) **Customer premises equipment (CPE)** -- Telephone terminal equipment located at a customer's premises. This does not include overvoltage protection equipment, inside wiring, coin-operated (or pay) telephones, "company-official" equipment, mobile telephone equipment, "911" equipment, equipment necessary for provision of communications for national defense, or multiplexing equipment used to deliver multiple channels to the customer.

(57) **Customer proprietary network information (CPNI), customer-specific** -- Any information compiled about a customer by a telecommunications utility in the normal course of providing telephone service that identifies the customer by matching such information with the customer's name, address, or billing telephone number. This

information includes, but is not limited to: line type(s), technical characteristics (*e.g.*, rotary service), class of service, current telephone charges, long distance billing record, local service billing record, directory assistance charges, usage data, and calling patterns.

(58) **Customer trouble report** -- Any oral or written report from a customer or user of telecommunications service received by any telecommunications utility relating to a physical defect, difficulty, or dissatisfaction with the service provided by the telecommunications utility's facilities. Each telephone or PBX switchboard position reported in trouble shall be counted as a separate report when several items are reported by one customer at the same time, unless the group of troubles so reported is clearly related to a common cause.

(59) **dBrn** -- A unit used to express noise power relative to one Pico watt (-90 dBm).

(60) **dBrnC** -- Noise power in dBrn, measured with C-message weighting.

(61) **dBrnCO** -- Noise power in dBrnC referred to or measured at a zero transmission level point.

(62) **D-Channel** -- The integrated-services-digital-network out-of-band signaling channel.

(63) **Dedicated signaling transport** -- Transmission of out-of-band signaling information between an access customer's common channel signaling network and a CTU's signaling transport point on facilities dedicated to the use of a single customer.

(64) **Dedicated 9-1-1 trunk** -- Refers to either:

(A) a single purpose telephone circuit, or Internet Protocol (IP) equivalent, that originates at a CTU's (CTU's) switching office or point of presence and connects to a port of termination at an E9-1-1 selective router, 9-1-1 tandem, IP-based 9-1-1 system, or next generation 9-1-1 system, as described to the CTU by the appropriate 9-1-1 administrative entity or entities in its 9-1-1 service arrangement requirements for each applicable rate center (direct dedicated 9-1-1 trunk); or

(B) any other single purpose telephone circuit, or IP equivalent, that is used by a CTU to provide 9-1-1 service consistent with the 9-1-1 administrative entity's or entities' 9-1-1 service arrangement requirements that does not connect directly to a port of termination as described in subparagraph (A) of this paragraph (indirect dedicated 9-1-1 trunk). A direct dedicated 9-1-1 trunk includes transport, port usage, and termination.

(65) **Default routing** -- The capability to route a 9-1-1 call to a designated public safety answering point when the incoming 9-1-1 call cannot be selectively routed due to an automatic number identification failure or other cause.

(66) **Depreciation expenses --** The charges based on the depreciation accrual rates designed to spread the cost recovery of the property over its economic life.

(67) **Deregulated company** -- An incumbent local exchange company (ILEC) for which all of the company's markets have been deregulated.

(68) **Direct-trunked transport** -- Transmission of traffic between the serving wire center and another CTU's office, without intermediate switching. It is charged on a flat-rate basis.

(69) **Disconnection of telephone service** -- The event after which a customer's telephone number is deleted from the central office switch and databases.

(70) **Discretionary services (DS)** -- Those services as defined in the Public Utility Regulatory Act §58.101, and any other service the commission subsequently categorizes as a discretionary service.

(71) **Distance learning** -- Instruction, learning, and training that is transmitted from one site to one or more sites by telecommunications services that are used by an educational institution predominantly for such instruction, learning, or training--including: video, data, voice, and electronic information.

(72) **Distribution lines** -- Those lines from which the end user may be provided direct service.

(73) **Dominant carrier** -- A provider of a communication service provided wholly or partly over a telephone system who the commission determines has sufficient market power in a telecommunications market to control prices for that service in that market in a manner adverse to the public interest. The term includes a provider who provided local exchange telephone service within certificated exchange areas on September 1, 1995, as to that

service and as to any other service for which a competitive alternative is not available in a particular geographic market. In addition with respect to:

(A) intraLATA long distance message telecommunications service originated by dialing the access code "1-plus," the term includes a provider of local exchange telephone service in a certificated exchange area for whom the use of that access code for the origination of "1-plus" intraLATA calls in the exchange area is exclusive; and

(B) interexchange services, the term does not include an interexchange carrier that is not a certificated local exchange company.

(74) **Dominant certificated telecommunications utility (DCTU)** -- A CTU that is also a dominant carrier. Unless clearly indicated otherwise, the rules applicable to a DCTU apply specifically to only those services for which the DCTU is dominant.

(75) **Dual-party relay service** -- A service using oral and printed translations, by either a person or an automated device, between hearing- or speech-impaired individuals who use telecommunications devices for the deaf, computers, or similar automated devices, and others who do not have such equipment.

(76) **Educational institution** -- Accredited primary or secondary schools owned or operated by state and local government entities or by private entities; institutions of higher education as defined by the Texas Education Code, §61.003(13); the Texas Education Agency, its successors and assigns; regional education service centers established and operated pursuant to the Texas Education Code, Chapter 8; and the Texas Higher Education Coordinating Board, its successors and assigns.

(77) **Electing local exchange company (LEC)** -- A CTU electing to be regulated under the terms of the Public Utility Regulatory Act, Chapter 58.

(78) **Electric utility** -- Except as provided in Chapter 25, Subchapter I, Division 1 of this title (relating to Open- Access Comparable Transmission Service for Electrical Utilities in the Electric Reliability Council of Texas), an electric utility is: A person or river authority that owns or operates for compensation in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electricity in this state. The term includes a lessee, trustee, or receiver of an electric utility and a recreational vehicle park owner who does not comply with Texas Utilities Code, Chapter 184, Subchapter C, with regard to the metered sale of electricity at the recreational vehicle park. The term does not include:

(A) a municipal corporation;

(B) a qualifying facility;

(C) a power generation company;

(D) an exempt wholesale generator;

(E) a power marketer;

(F) a corporation described by Public Utility Regulatory Act §32.053 to the extent the corporation sells electricity exclusively at wholesale and not to the ultimate consumer;

(G) an electric cooperative;

(H) a retail electric provider;

(I) the state of Texas or an agency of the state; or

(J) a person not otherwise an electric utility who:

(i) furnishes an electric service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others;

(ii) owns or operates in this state equipment or facilities to produce, generate, transmit, distribute, sell or furnish electric energy to an electric utility, if the equipment or facilities are used primarily to produce and generate electric energy for consumption by that person; or

(iii) owns or operates in this state a recreational vehicle park that provides metered electric service in accordance with Texas Utilities Code, Chapter 184, Subchapter C.

(79) **Element** -- Unbundled network elements, including: interconnection, physical-collocation, and virtual-collocation elements.

(80) **Eligible telecommunications provider** (ETP) **service** area -- The geographic area, determined by the commission, containing high cost rural areas which are eligible for Texas Universal Service Funds support under §26.403 or §26.404 of this title (relating to Texas High Cost Universal Service Plan (THCUSP) and Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan).

(81) **Embedded customer premises equipment** -- All customer premises equipment owned by a telecommunications utility, including inventory, which was tariffed or subject to the separations process of January 1, 1983.

(82) **Emergency service number** (**ESN**) -- A three to five digit number representing a unique combination of emergency service agencies designated to serve a specific range of addresses within a particular geographic area. The ESN facilitates any required selective routing and selective transfer to the appropriate public safety answering point and the dispatching of the proper service agencies.

(83) **Emergency service zone (ESZ)** -- A geographic area that has common law enforcement, fire, and emergency medical services personnel that respond to 9-1-1 calls.

(84) **End user choice** -- A system that allows the automatic routing of interexchange, operator-assisted calls to the billed party's chosen carrier without the use of access codes.

(85) **Enhanced service provider** -- A company that offers computer-based services over transmission facilities to provide the customer with value-added telephone services.

(86) **Entrance facilities** -- The transmission path between the access customer's (such as an interexchange carrier) point of demarcation and the serving wire center.

(87) **Equal access** --Access which is equal in type, quality and price to Feature Group C, and which has unbundled rates. From an end user's perspective, equal access is characterized by the availability of "1-plus" dialing with the end user's carrier of choice.

(88) **Exchange area** -- The geographic territory delineated as an exchange area by official commission boundary maps. An exchange area usually embraces a city or town and its environs. There is usually a uniform set of charges for telecommunications service within the exchange area. An exchange area may be served by more than one central office and/or one certificated telephone utility. An exchange area may also be referred to as an exchange.

(89) **Exempt Carrier** -- A nondominant telecommunications utility that satisfies any of the criteria of PURA § 52.154.

(90) **Expenses** -- Costs incurred in the provision of services that are expensed, rather than capitalized, in accordance with the Uniform System of Accounts applicable to the carrier.

(91) **Experimental service** -- A new service that is proposed to be offered on a temporary basis for a specified period not to exceed one year from the date the service is first provided to any customer.

(92) **Extended** area **service** (**EAS)** -- A telephone switching and trunking arrangement which provides for optional calling service by DCTUs within a local access and transport area and between two contiguous exchanges or between an exchange and a contiguous metropolitan exchange local calling area. For purposes of this definition, a metropolitan exchange local calling area shall include all exchanges having local or mandatory EAS calling throughout all portions of any of the following exchanges: Austin metropolitan exchange, Corpus Christi metropolitan exchange, Dallas metropolitan exchange, Fort Worth metropolitan exchange, Houston metropolitan exchange, San Antonio metropolitan exchange, or Waco metropolitan exchange. EAS is provided at rate increments in addition to local exchange rates, rather than at toll message charges.

(93) **Extended local calling service** (**ELCS)** -- Service provided pursuant to §26.219 and §26.221 of this title (relating to Administration of Expanded Local Calling Requests; and Applications to Establish or Increase Expanded Local Calling Service Surcharges).

(94) **E911 or E9-1-1** -- 9-1-1 service that is capable of providing automatic number identification, automatic location identification, selective routing, and selective transfer.

(95) **Facilities** -- All the plant and equipment of a public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled,

furnished, or supplied for, by, or in connection with the business of any public utility, including any construction work in progress allowed by the commission.

(96) **Facilities-based provider** -- A telecommunications provider that provides telecommunications services using facilities that it owns or leases or a combination of facilities that it owns and leases, including unbundled network elements.

(97) **Foreign exchange (FX)** -- Exchange service furnished by means of a circuit connecting a customer's station to a primary serving office of another exchange.

(98) **Foreign serving office (FSO)** -- Exchange service furnished by means of a circuit connecting a customer's station to a serving office of the same exchange but outside of the serving office area in which the station is located.

(99) **Forward-looking common costs** -- Economic costs efficiently incurred in providing a group of elements or services that cannot be attributed directly to individual elements or services.

(100) **Forward-looking economic cost** -- The sum of the total element long-run incremental cost of an element and a reasonable allocation of its forward-looking common costs.

(101) **Forward-looking economic cost per unit** -- The forward-looking economic cost of the element as defined in this section, divided by a reasonable projection of the sum of the total number of units of the element that the DCTU is likely to provide to requesting telecommunications carriers and the total number of units of the element that the DCTU is likely to use in offering its own services, during a reasonable time period.

(102) **Geographic scope** -- The geographic area in which the holder of a COA or of a SPCOA is authorized to provide service.

(103) **Grade of service** -- The number of customers a line is designated to serve.

(104) **Health Center** -- A federally qualified health center service delivery site.

(105) **Hearing** -- Any proceeding at which evidence is taken on the merits of the matters at issue, not including prehearing conferences.

(106) **Hearing carryover** -- A technology that allows an individual who is speech-impaired to hear the other party in a telephone conversation and to use specialized telecommunications devices to send communications through the telecommunications relay service operator.

(107) **High cost area** -- A geographic area for which the costs established using a forward-looking economic cost methodology exceed the benchmark levels established by the commission.

(108) **High cost assistance** (HCA) -- A program administered by the commission in accordance with the provisions of §26.403 of this title.

(109) **Identity** -- The name, address, telephone number, and/or facsimile number of a person, whether natural, partnership, municipal corporation, cooperative corporation, corporation, association, governmental subdivision, or state agency and the relationship of the person to the entity being represented.

(110) **Impulse noise** -- Any momentary occurrence of the noise on a channel significantly exceeding the normal noise peaks. It is evaluated by counting the number of occurrences that exceed a threshold. This noise degrades voice and data transmission.

(111) **Incumbent local exchange company (ILEC)** -- A local exchange company that had a CCN on September 1, 1995.

(112) **Informational notice** - Notice that is filed in connection with nonbasic services, new service offerings, and pricing and packaging flexibility if required by Public Utility Regulatory Act Chapters 52, 58, or 59.

(113) **Information sharing program** -- Instruction, learning, and training that is transmitted from one site to one or more sites by telecommunications services that are used by a library predominantly for such instruction, learning, or training, including video, data, voice, and electronic information.

(114) **Integrated services digital network (ISDN)** -- A digital network architecture that provides a wide variety of communications services, a standard set of user-network messages, and integrated access to the network. Access methods to the ISDN are the Basic Rate Interface (BRI) and the Primary Rate Interface (PRI).

(115) **Interactive multimedia communications** -- Real-time, two-way, interactive voice, video, and data communications conducted over networks that link geographically dispersed

locations. This definition includes interactive communications within or between buildings on the same campus or library site.

(116) **Intercept service** -- A service arrangement provided by the local exchange carrier whereby calls placed to a disconnected or discontinued telephone number are intercepted and the calling party is informed by an operator or by a recording that the called telephone number has been disconnected, discontinued, changed to another number, or otherwise is not in service.

(117) **Interconnection** -- Generally means: The point in a network where a customer's transmission facilities interface with the dominant carrier's network under the provisions of this section. More particularly it means: The termination of local traffic including basic telecommunications service as delineated in §26.403 of this title or integrated services digital network (ISDN) as defined in this section and/or EAS/ELCS traffic of a CTU using the local access lines of another CTU, as described in §26.272(d)(4)(A) of this title (relating to Interconnection). Interconnection shall include non-discriminatory access to signaling systems, databases, facilities and information as required to ensure interoperability of networks and efficient, timely provision of services to customers without permitting access to network proprietary information or customer proprietary network information, as defined in this section, unless otherwise permitted in §26.272 of this title.

(118) **Interconnector** -- A customer that interfaces with the dominant carrier's network under the provisions of §26.271 of this title (relating to Expanded Interconnection).

(119) **Interexchange carrier (IXC)** -- A carrier providing any means of transporting intrastate telecommunications messages between local exchanges, but not solely within local exchanges, in the State of Texas. The term may include a CTU or CTU affiliate to the extent that it is providing such service. An entity is not an IXC solely because of:

(A) the furnishing, or furnishing and maintenance of a private system;

(B) the manufacture, distribution, installation, or maintenance of customer premises equipment;

(C) the provision of services authorized under the FCC's Public Mobile Radio Service and Rural Radio Service rules; or

(D) the provision of shared tenant service.

(120) **Internet Protocol (IP**) -- A data communication protocol used in communicating data from one computer to another on the Internet or other networks.

(121) Internet Protocol enabled service -- a service, capability, functionality, or application that uses Internet Protocol or a successor protocol to allow an end user to send or receive a data, video, or voice communication in Internet Protocol or a successor protocol.

(122) **Interoffice trunks** -- Those communications circuits which connect central offices.

(123) **IntraLATA equal access** -- The ability of a caller to complete a toll call in a local access and transport area (LATA) using his or her provider of choice by dialing "1" or "0" plus an area code and telephone number.

(124) **Intrastate** -- Refers to communications which both originate and terminate within Texas state boundaries.

(125) **Least cost technology** -- The technology or mix of technologies that would be chosen in the long run as the most economically efficient choice. The choice of least cost technologies, however, shall:

(A) be restricted to technologies that are currently available on the market and for which vendor prices can be obtained;

(B) be consistent with the level of output necessary to satisfy current demand levels for all services using the basic network function in question; and

(C) be consistent with overall network design and topology requirements.

(126) **License** -- The whole or part of any commission permit, certificate, approval, registration, or similar form of permission required by law.

(127) **Licensing** -- The commission process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(128) **Lifeline Service** -- A program certified by the Federal Communications Commission to provide for the reduction or waiver of the federal subscriber line charge for residential consumers.

(129) **Line** -- A circuit or channel extending from a central office to the customer's location to provide telecommunications service. One line may serve one customer, or all customers served by a multiparty line.

(130) **Local access and transport area (LATA)** -- A geographic area established for the provision and administration of communications service. It encompasses one or more designated exchanges, which are grouped to serve common social, economic and other purposes. For purposes of these rules, market areas, as used and defined in the Modified Final Judgment and the GTE Final Judgment, are encompassed in the term local access and transport area.

(131) **Local call** -- A call within the certificated telephone utility's toll-free calling area including calls which are made toll-free through a mandatory EAS or expanded local calling (ELC) proceeding.

(132) **Local calling area** -- The area within which telecommunications service is furnished to customers under a specific schedule of exchange rates. A local calling area may include more than one exchange area**.**

(133) **Local exchange carrier** (**LEC)** -- A telecommunications utility that has been granted either a certificate of convenience and necessity or a COA to provide local exchange telephone service, basic local telecommunications service, or switched access service within the state. A local exchange company is also referred to as a local exchange carrier.

(134) **Local exchange telephone service or local exchange service** -- A telecommunications service provided within an exchange to establish connections between customer premises within the exchange, including connections between a customer premises and a long distance provider serving the exchange. The term includes tone dialing service, service connection charges, and directory assistance services offered in connection with basic local telecommunications service and interconnection with other service providers. The term does not include the following services, whether offered on an intra-exchange or inter-exchange basis:

(A) central office based PBX-type services for systems of 75 stations or more;

(B) billing and collection services;

(C) high-speed private line services of 1.544 megabits or greater;

(D) customized services;

(E) private line or virtual private line services;

(F) resold or shared local exchange telephone services if permitted by tariff;

(G) dark fiber services;

(H) non-voice data transmission service offered as a separate service and not as a component of basic local telecommunications service;

(I) dedicated or virtually dedicated access services;

(J) a competitive exchange service; or

(K) any other service the commission determines is not a "local exchange telephone service."

(135) **Local message** -- A completed call between customer access lines located within the same local calling area.

(136) **Local message charge** -- The charge that applies for a completed telephone call that is made when the calling customer access line and the customer access line to which the connection is established are both within the same local calling area, and a local message charge is applicable.

(137) **Local service charge** -- The charge for furnishing facilities to enable a customer to send or receive telecommunications within the local calling area. This local calling area may include more than one exchange area.

(138) **Local telecommunications traffic** --

(A) Telecommunications traffic between a DCTU and a telecommunications carrier other than a commercial mobile radio service (CMRS) provider that originates and terminates within the mandatory single or multi-exchange local calling area of a DCTU including the mandatory EAS areas served by the DCTU; or

(B) Telecommunications traffic between a DCTU and a CMRS provider that, at the beginning of the call, originates and terminates within the same major trading area.

(139) **Long distance telecommunications service** -- That part of the total communication service rendered by a telecommunications utility which is furnished between customers in different local calling areas in accordance with the rates and regulations specified in the utility's tariff.

(140) **Long run** -- A time period long enough to be consistent with the assumption that the company is in the planning stage and all of its inputs are variable and avoidable.

(141) **Long run incremental cost** (LRIC) -- The change in total costs of the company of producing an increment of output in the long run when the company uses least cost technology. The LRIC should exclude any costs that, in the long run, are not brought into existence as a direct result of the increment of output.

(142) **Mandatory minimum standards** -- The standards established by the Federal Communications Commission, outlining basic mandatory telecommunication relay services.

(143) **Market** -- An exchange in which an incumbent local exchange company provides residential local exchange telephone service.

(144) **Master street address guide** (MSAG) -- A database maintained by each 9-1-1 administrative entity of street names and house number ranges within their associated communities defining emergency service zones and their associated emergency service numbers to enable proper routing of 9-1-1 calls.

(145) **Meet point billing** -- An access billing arrangement for services to access customers when local transport is jointly provided by more than one CTU.

(146) **Message** -- A completed customer telephone call.

(147) **Message rate service** -- A form of local exchange service under which all originated local messages are measured and charged for in accordance with the utility's tariff.

(148) **Minor rate change** -- A change, including the restructuring of rates of existing services, that decreases the rates or revenues of the small local exchange company (SLEC) or that, together with any other rate or proposed or approved tariff changes in the 12 months preceding the date on which the proposed change will take effect, results in an increase of the SLEC's total regulated intrastate gross annual revenues by not more than 5.0%. Further, with regard to a change to a basic local access line rate, a minor change may not, together with any other change to that rate that went into effect during the 12 months preceding the proposed effective date of the proposed change, result in an increase of more than 50%.

(149) **Municipality** -- A city, incorporated village, or town, existing, created, or organized under the general, home rule, or special laws of the state.

(150) **National integrated services digital network (ISDN)** -- The standards and services promulgated for integrated services digital network by Bellcore.

(151) **Negotiating party** -- A CTU or other entity with which a requesting CTU seeks to interconnect in order to complete all telephone calls made by or placed to a customer of the requesting CTU.

(152) **Next generation 9-1-1 system (NG9-1-1 system)** -- A system of securely managed IP-based 9-1-1 networks and elements that augment and are capable of interoperating with present-day E9-1-1 features and functions and add new capabilities. NG9-1-1 may replace or complement the present E9-1-1 system. NG9-1-1 is designed to provide access to emergency services from all sources, and to provide multimedia data capabilities for public safety answering positions and other emergency service organizations.

(153) **New service** -- Any service not offered on a tariffed basis prior to the date of the application relating to such service and specifically excludes basic local telecommunications service including local measured service. If a proposed service could serve as an alternative or replacement for a service offered prior to the date of the new-service application and does not provide significant improvements (other than price) over, or significant additional services not available under, a service offered prior to the date of such application, it shall not be considered a new service.

(154) **Nonbasic services** -- Those services identified in Public Utility Regulatory Act §58.151, including any service reclassified by the commission pursuant to Public Utility Regulatory Act §58.024.

(155) **Non-discriminatory** -- Type of treatment that is not less favorable than that an interconnecting CTU provides to itself or its affiliates or other CTUs.

(156) **Non-dominant certificated telecommunications utility (NCTU)** -- A CTU that is not a DCTU and has been granted a CCN (after September 1, 1995, in an area already certificated to a DCTU), a COA, or a SPCOA to provide local exchange service.

(157) **Nondominant carrier** --

(A) An interexchange telecommunications carrier (including a reseller of interexchange telecommunications services).

(B) Any of the following that is not a dominant carrier:

(i) a specialized communications common carrier;

(ii) any other reseller of communications;

(iii) any other communications carrier that conveys, transmits, or receives communications in whole or in part over a telephone system; or

(iv) a provider of operator services that is not also a subscriber.

(C) A deregulated company that holds a COA.

(158) **North American Numbering Plan (NANP)** -- Use of 10-digit dialing in the format of a 3-digit "NPA" followed by a 3-digit "NXX" and a 4-digit line number, NPA-NXX-XXX.

(159) **Numbering plan area (NPA)** -- The first three digits of a ten-digit North American Numbering Plan (NANP) local telephone number uniquely identifying a Numbering Plan area. Generally referred to as the area code of a NANP telephone number.

(160) **NXX** -- A 3-digit code in which N is any digit 2 through 9 and X is any digit 0 through 9. Typically used in describing the "Exchange Code" fields of a North American Numbering Plan telephone number.

(161) **Open network architecture** -- The overall design of an ILEC's network facilities and services to permit all users of the network, including the enhanced services operations of an ILEC and its competitors, to interconnect to specific basic network functions on an unbundled and non-discriminatory basis.

(162) **Operator service** -- Any service using live operator or automated operator functions for the handling of telephone service, such as local collect, toll calling via collect, third number billing, credit card, and calling card services. The transmission of "1-800" and "1-888" numbers, where the called party has arranged to be billed, is not operator service.

(163) **Operator service provider (OSP)** -- Any person or entity that provides operator services by using either live or automated operator functions. When more than one entity is involved in processing an operator service call, the party setting the rates shall be considered to be the OSP. However, subscribers to customer-owned pay telephone service shall not be deemed to be OSPs.

(164) **Originating line screening (OLS)** -- A two digit code passed by the local switching system with the automatic number identification (ANI) at the beginning of a call that provides information about the originating line.

(165) **Out-of-service trouble report** -- An initial customer trouble report in which there is complete interruption of incoming or outgoing local exchange service. On multiple line services a failure of one central office line or a failure in common equipment affecting all lines is considered out of service. If an extension line failure does not result in the complete inability to receive or initiate calls, the report is not considered to be out of service.

(166) **P.01 grade of service** -- A standard of service quality intended to measure the probability (P), expressed as a decimal fraction, of a telephone call being blocked. P.01 is the grade of service reflecting the probability that one call out of one hundred during the average busy house will be blocked.

(167) **Packaged Service** - The combination of any regulated service with any other regulated or unregulated service or with any service of an affiliate, offered to customers at a packaged rate or rates.

(168) **Partial deregulation** -- The ability of a cooperative to offer new services on an optional basis and/or change its rates and tariffs under the provisions of the Public Utility Regulatory Act, §§53.351 - 53.359.

(169) **Pay-per-call-information services** -- Services that allow a caller to dial a specified 1-900-XXX-XXXX or 976-XXXX number. Such services routinely deliver, for a predetermined

(sometimes time-sensitive) fee, a pre-recorded or live message or interactive program. Usually a telecommunications utility will transport the call and bill the end-user on behalf of the information provider.

(170) **Pay telephone access service (PTAS)** -- A service offered by a CTU which provides a two-way, or optionally, a one-way originating-only business access line composed of the serving central office line equipment, all outside plant facilities needed to connect the serving central office with the customer premises, and the network interface; this service is sold to pay telephone service providers.

(171) **Pay telephone service (PTS)** -- A telecommunications service utilizing any coin, coinless, credit card reader, or cordless instrument that can be used by members of the general public, or business patrons, employees, and/or visitors of the premises' owner, provided that the end user pays for local or toll calls from such instrument on a per call basis. Pay per call telephone service provided to inmates of confinement facilities is PTS. For purposes of this section, coinless telephones provided in guest rooms by a hotel/motel are not pay telephones. A telephone that is primarily used by business patrons, employees, and/or visitors of the premises' owner is not a pay telephone if all local calls and "1-800" and "1-888" type calls from such telephone are free to the end user.

(172) **Per-call blocking** -- A telecommunications service provided by a telecommunications provider that prevents the transmission of calling party information to a called party on a call-by-call basis.

(173) **Per-line blocking** -- A telecommunications service provided by a telecommunications utility that prevents the transmission of calling party information to a called party on every call, unless the calling party acts affirmatively to release calling party information.

(174) **Percent interstate usage (PIU)** -- An access customer-specific ratio or ratios determined by dividing interstate access minutes by total access minutes. The specific ratio shall be determined by the CTU unless the CTU's network is incapable of determining the jurisdiction of the access minutes. A PIU establishes the jurisdiction of switched access usage for determining rates charged to switched access customers and affects the allocation of switched access revenue and costs by CTUs between the interstate and intrastate jurisdictions.

(175) **Person** -- Any natural person, partnership, municipal corporation, cooperative corporation, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

(176) **Pleading** -- A written document submitted by a party, or a person seeking to participate in a proceeding, setting forth allegations of fact, claims, requests for relief, legal argument, and/or other matters relating to a proceeding.

(177) **Prepaid local telephone service (PLTS)** -- Prepaid local telephone service means:

(A) voice grade dial tone residential service consisting of flat rate service or local measured service, if chosen by the customer and offered by the DCTU;

(B) if applicable, mandatory services, including EAS, extended metropolitan service, or ELCS;

(C) tone dialing service;

(D) access to 911 service;

(E) access to dual party relay service;

(F) the ability to report service problems seven days a week;

(G) access to business office;

(H) primary directory listing;

(I) toll blocking service; and

(J) non-published service and non-listed service at the customer's option.

(178) **Premises** -- A tract of land or real estate including buildings and other appurtenances thereon.

(179) **Pricing flexibility** -- Discounts and other forms of pricing flexibility may not be preferential, prejudicial, or discriminatory. Pricing flexibility includes:

(A) customer specific contracts;

(B) volume, term, and discount pricing;

(C) zone density pricing, with zone to be defined as an exchange;

(D) packaging of services; and
(E) other promotional pricing flexibility.

(180) **Primary interexchange carrier (PIC)** -- The provider chosen by a customer to carry that customer's toll calls.

(181) **Primary interexchange carrier (PIC) freeze indicator** -- An indicator that the end user has directed the CTU to make no changes in the end user's PIC.

(182) **Primary rate interface (PRI) integrated services digital network (ISDN)** -- One of the access methods to ISDN, the 1.544-Mbps PRI comprises either twenty-three 64 Kbps B-channels and one 64 Kbps D-channel (23B+D) or twenty-four 64 Kbps B-channels (24B) when the associated call signaling is provided by another PRI in the group.

(183) **Primary service** -- The initial provision of voice grade access between the customer's premises and the switched telecommunications network. This includes the initial connection to a new customer or the move of an existing customer to a new premises but does not include complex services.

(184) **Print translations** -- The temporary storage of a message in an operator's screen during the actual process of relaying a conversation.

(185) **Privacy issue** -- An issue that arises when a telecommunications provider proposes to offer a new telecommunications service or feature that would result in a change in the outflow of information about a customer. The term privacy issue is to be construed broadly. It includes, but is not limited to, changes in the following:
(A) the type of information about a customer that is released;
(B) the customers about whom information is released;
(C) the entity or entities to whom the information about a customer is released;
(D) the technology used to convey the information;
(E) the time at which the information is conveyed; and
(F) any other change in the collection, use, storage, or release of information.

(186) **Private line** -- A transmission path that is dedicated to a customer and that is not connected to a switching facility of a telecommunications utility, except that a dedicated transmission path between switching facilities of interexchange carriers shall be considered a private line.

(187) **Proceeding** -- A hearing, investigation, inquiry, or other procedure for finding facts or making a decision. The term includes a denial of relief or dismissal of a complaint. It may be rulemaking or non-rulemaking; rate setting or non-rate setting.

(188) **Promotional rate** -- A temporary tariff, fare, toll, rental or other compensation charged by a certificated telecommunications utility (CTU) to new or new and existing customers and designed to induce customers to test a service. A promotional rate shall incorporate a reduction or a waiver of some rate element in the tariffed rates of the service, or a reduction or waiver of the service's installation charge and/or service connection charges, and shall not incorporate any charge for discontinuance of the service by the customer. Such rates may not be offered for basic local telecommunications service, including local measured service.

(189) **Promotional Servi**ce - a service offered to customers at a promotional rate or rates.

(190) **Provider of pay telephone service** -- The entity that purchases PTAS from a CTU and registers with the Public Utility Commission as a provider of PTS to end users.

(191) **Public safety answering point (PSAP)** -- A continuously operated communications facility established or authorized by local government authorities that answers 9-1-1 calls originating within a given service area, as further defined in Texas Health and Safety Code Chapters 771 and 772.

(192) **Public utility or utility** -- A person or river authority that owns or operates for compensation in this state equipment or facilities to convey, transmit, or receive communications over a telephone system as a dominant carrier. The term includes a lessee, trustee, or receiver of any of those entities, or a combination of those entities. The term does not include a municipal corporation. A person is not a public utility solely because the person:
(A) furnishes or furnishes and maintains a private system;

(B) manufactures, distributes, installs, or maintains customer premises communications equipment and accessories; or

(C) furnishes a telecommunications service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others.

(193) **Public Utility Regulatory Act (PURA)** -- The enabling statute for the Public Utility Commission of Texas, located in the Texas Utilities Code Annotated, §§11.001 - 66.016, (West 2007, Supplement 2013).

(194) **Qualifying low-income consumer** -- A consumer that participates in one of the following programs: Medicaid, food stamps, Supplemental Security Income, federal public housing assistance, or Low-Income Home Energy Assistance Program.

(195) **Qualifying services** --

(A) residential flat rate basic local exchange service;

(B) residential local exchange access service; and

(C) residential local area calling usage.

(196) **Rate** -- Includes:

(A) any compensation, tariff, charge, fare, toll, rental, or classification that is directly or indirectly demanded, observed, charged, or collected by a public utility for a service, product, or commodity, described in the definition of utility in the Public Utility Regulatory Act §31.002 or §51.002; and

(B) a rule, practice, or contract affecting the compensation, tariff, charge, fare, toll, rental, or classification.

(197) **Reciprocal compensation** -- An arrangement between two carriers in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of local telecommunications traffic that originates on the network facilities of the other carrier.

(198) **Reclassification area** -- The geographic area within the electing ILEC's territory, consisting of one or more exchange areas, for which it seeks reclassification of a service.

(199) **Redirect the call** -- A procedure used by operator service providers (OSPs) that transmits a signal back to the originating telephone instrument that causes the instrument to disconnect the OSP's connection and to redial the digits originally dialed by the caller directly to the local exchange carrier's network.

(200) **Regional planning commission** -- The meaning established in Texas Health and Safety Code §771.001(10).

(201) **Regulatory authority** -- In accordance with the context where it is found, either the commission or the governing body of a municipality.

(202) **Relay Texas Advisory Committee (RTAC)** -- The committee authorized by the Public Utility Regulatory Act, §56.110 and 1997 Texas General Laws Chapter 149.

(203) **Relay Texas** -- The name by which telecommunications relay service in Texas is known.

(204) **Relay Texas administrator** -- The individual employed by the commission to oversee the administration of statewide telecommunications relay service.

(205) **Repeated trouble report** -- A customer trouble report regarding a specific line or circuit occurring within 30 days or one calendar month of a previously cleared trouble report on the same line or circuit.

(206) **Residual charge** -- The per-minute charge designed to account for historical contribution to joint and common costs made by switched transport services.

(207) **Retail service** -- A telecommunications service is considered a retail service when it is provided to residential or business end users and the use of the service is other than resale. Each tariffed or contract offering which a customer may purchase to the exclusion of other offerings shall be considered a service. For example: the various mileage bands for standard toll services are rate elements, not services; however, individual optional calling plans that can be purchased individually and which are offered as alternatives to each other are services, not rate elements.

(208) **Return-on-assets** -- After-tax net operating income divided by total assets.

(209) **Reversal of partial deregulation** -- The ability of a minimum of 10% of the members of a partially deregulated cooperative to request, in writing, that a vote be conducted to

determine whether members prefer to reverse partial deregulation. Ten percent shall be calculated based upon the total number of members of record as of the calendar month preceding receipt of the request from members for reversal of partial deregulation.

(210) **R**ule -- A statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the commission. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of the commission and not affecting private rights or procedures.

(211) **Rulemaking proceeding** -- A proceeding conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, Subchapter B, to adopt, amend, or repeal a commission rule.

(212) **Rural incumbent local exchange company (ILEC)** -- An ILEC that qualifies as a "rural telephone company" as defined in 47 United States Code §3(37) and/or 47 United States Code §251(f)(2).

(213) **Selective routing** -- The feature provided with 9-1-1 or 311 service by which 9-1-1 or 311 calls are automatically directed to the appropriate answering point for serving the location from which the call originates.

(214) **Selective transfer** -- A public safety answering point initiating the routing of a 9-1-1 call to a response agency by operation of one of several buttons typically designated as police, fire, and emergency medical, based on the emergency service number of the caller.

(215) **Separation** -- The division of plant, revenues, expenses, taxes, and reserves applicable to exchange or local service if these items are used in common to provide public utility service to both local exchange telephone service and other service, such as interstate or intrastate toll service.

(216) **Service** -- Has its broadest and most inclusive meaning. The term includes any act performed, anything supplied, and any facilities used or supplied by a public utility in the performance of the utility's duties under the Public Utility Regulatory Act to its patrons, employees, other public utilities, and the public. The term also includes the interchange or facilities between two or more public utilities. The term does not include the printing, distribution, or sale of advertising in a telephone directory.

(217) **Service connection charge** -- A charge designed to recover the costs of non-recurring activities associated with connection of local exchange telephone service.

(218) **Service order system** -- The system used by a telecommunications provider that, among other functions, tracks customer service requests and billing data.

(219) **Service provider** -- Any entity that offers a product or service to a customer and that directly or indirectly charges to or collects from a customer's bill an amount for the product or service on a customer's bill received from a billing telecommunications utility.

(220) **Service provider certificate of operating authority (SPCOA) reseller** -- A holder of a service provider certificate of operating authority that uses only resold telecommunications services provided by an ILEC or by a COA holder or by a SPCOA holder.

(221) **Service restoral charge** -- A charge applied by the DCTU to restore service to a customer's telephone line after it has been suspended by the DCTU.

(222) **Serving wire center (SWC)** -- The CTU designated central office which serves the access customer's point of demarcation.

(223) **Signaling for tandem switching** -- The carrier identification code (CIC) and the OZZ code or equivalent information needed to perform tandem switching functions. The CIC identifies the interexchange carrier and the OZZ digits identify the call type and thus the interexchange carrier trunk to which traffic should be routed.

(224) **Small certificated telecommunications utility (CTU)** -- A CTU with fewer than 2.0% of the nation's subscriber lines installed in the aggregate nationwide.

(225) **Small local exchange company (SLEC)** -- Any incumbent CTU as of September 1, 1995, that has fewer than 31,000 access lines in service in this state, including the access lines of all affiliated incumbent local exchange companies within the state, or a telephone cooperative organized pursuant to the Telephone Cooperative Act, Texas Utilities Code Annotated, Chapter 162.

(226) Small incumbent local exchange company (Small ILEC) -- An ILEC that is a cooperative corporation or has, together with all affiliated ILECs, fewer than 31,000 access lines in service in Texas.

(227) **Spanish speaking person --** A person who speaks any dialect of the Spanish language exclusively or as their primary language.

(228) **Special access** -- A transmission path connecting customer designated premises to each other either directly or through a hub or hubs where bridging, multiplexing or network reconfiguration service functions are performed and includes all exchange access not requiring switching performed by the dominant carrier's end office switches.

(229) **Specialized Telecommunications Assistance Program (STAP)** -- The program described in §26.415 of this title (relating to Specialized Telecommunications Assistance Program (STAP)).

(230) **Specialized Telecommunications Assistance Program (STAP) voucher** -- A voucher issued by the Texas Department of Assistive and Rehabilitative Services under the equipment distribution program, in accordance with its rules, that an eligible individual may use to acquire eligible specialized telecommunications devices from a vendor of such equipment.

(231) **Stand-alone costs** -- The stand-alone costs of an element or service are defined as the forward-looking costs that an efficient entrant would incur in providing only that element or service.

(232) **Station** -- A telephone instrument or other terminal device.

(233) **Study area** -- An incumbent local exchange company's (ILEC's) existing service area in a given state.

(234) **Supplemental services** -- Telecommunications features or services offered by a CTU for which analogous services or products may be available to the customer from a source other than a DCTU. Supplemental services shall not be construed to include optional extended area calling plans that a DCTU may offer pursuant to §26.217 of this title (relating to Administration of Extended Area Service (EAS) Requests), or pursuant to a final order of the commission in a proceeding pursuant to the Public Utility Regulatory Act, Chapter 53.

(235) **Suspension of service** -- That period during which the customer's telephone line does not have dial tone but the customer's telephone number is not deleted from the central office switch and databases.

(236) **Switched access** -- Access service that is provided by CTUs to access customers and that requires the use of CTU network switching or common line facilities generally, but not necessarily, for the origination or termination of interexchange calls. Switched access includes all forms of transport provided by the CTU over which switched access traffic is delivered.

(237) **Switched access demand** -- Switched access minutes of use, or other appropriate measure where not billed on a minute of use basis, for each switched access rate element, normalized for out of period billings. For the purposes of this section, switched access demand shall include minutes of use billed for the local switching rate element.

(238) **Switched access minutes** -- The measured or assumed duration of time that a CTU's network facilities are used by access customers. Access minutes are measured for the purpose of calculating access charges applicable to access customers.

(239) **Switched transport** -- Transmission between a CTU's central office (including tandem-switching offices) and an interexchange carrier's point of presence.

(240) **Tandem-switched transport --** Transmission of traffic between the serving wire center and another CTU office that is switched at a tandem switch and charged on a usage basis.

(241) **Tariff** -- The schedule of a utility containing all rates, tolls, and charges stated separately by type or kind of service and the customer class, and the rules and regulations of the utility stated separately by type or kind of service and the customer class.

(242) **Telecommunications provider** -- As defined in the Public Utility Regulatory Act §51.002(10).

(243) **Telecommunications relay service (TRS)** -- A service using oral and print translations by either live or automated means between individuals who are hearing-impaired or speech-impaired who use specialized telecommunications devices and others who do not have such

devices. Unless specified in the text, this term shall refer to intrastate telecommunications relay service only.

(244) **Telecommunications relay service (TRS) carrier** -- The telecommunications carrier selected by the commission to provide statewide telecommunications relay service.

(245) **Telecommunications** uti**lity --**

(A) a public utility;

(B) an interexchange telecommunications carrier, including a reseller of interexchange telecommunications services;

(C) a specialized communications common carrier;

(D) a reseller of communications;

(E) a communications carrier who conveys, transmits, or receives communications wholly or partly over a telephone system;

(F) a provider of operator services as defined by §55.081, unless the provider is a subscriber to customer-owned PTS; and

(G) a separated affiliate or an electronic publishing joint venture as defined in the Public Utility Regulatory Act, Chapter 63.

(246) **Telephones intended to be utilized by the public** -- Telephones that are accessible to the public, including, but not limited to, pay telephones, telephones in guest rooms and common areas of hotels, motels, or other lodging locations, and telephones in hospital patient rooms.

(247) **Telephone solicitation** -- An unsolicited telephone call.

(248) **Telephone solicitor** -- A person who makes or causes to be made a consumer telephone call, including a call made by an automatic dialing/announcing device.

(249) **Test year** -- The most recent 12 months, beginning on the first day of a calendar or fiscal year quarter, for which operating data for a public utility are available.

(250) **Texas Universal Service Fund (TUSF)** -- The fund authorized by the Public Utility Regulatory Act, §56.021 and 1997 Texas General Laws Chapter 149.

(251) Tier 1 local exchange company -- A local exchange company with annual regulated operating revenues exceeding $100 million.

(252) **Title IV-D Agency** -- The office of the attorney general for the state of Texas.

(253) **Toll blocking** -- A service provided by telecommunications carriers that lets consumers elect not to allow the completion of outgoing toll calls from their telecommunications channel.

(254) **Toll control** -- A service provided by telecommunications carriers that allows consumers to specify a certain amount of toll usage that may be incurred on their telecommunications channel per month or per billing cycle.

(255) **Toll limitation** -- Denotes both toll blocking and toll control.

(256) **Total element long-run incremental cost (TELRIC)** -- The forward-looking cost over the long run of the total quantity of the facilities and functions that are directly attributable to, or reasonably identifiable as incremental to, such element, calculated taking as a given the CTU's provision of other elements.

(257) **Transitioning company** -- An incumbent local exchange company for which at least one, but not all, of the company's markets has been deregulated.

(258) **Transport** -- The transmission and/or any necessary tandem and/or switching of local telecommunications traffic from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than a DCTU.

(259) **Trunk** -- A circuit facility connecting two switching systems.

(260) **Two-primary interexchange carrier (Two-PIC) equal access** -- A method that allows a telephone subscriber to select one carrier for all 1+ and 0+ interLATA calls and the same or a different carrier for all 1+ and 0+ intraLATA calls.

(261) **Unauthorized charge** -- Any charge on a customer's telephone bill that was not consented to or verified in compliance with §26.32 of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming")).

(262) **Unbundling** -- The disaggregation of the ILEC's network/service to make available the individual network functions or features or rate elements used in providing an existing service.

(263) **Unit cost** -- A cost per unit of output calculated by dividing the total long run incremental cost of production by the total number of units.

(264) **Usage sensitive blocking** -- Blocking of a customer's access to services which are charged on a usage sensitive basis for completed calls. Such calls shall include, but not be limited to, call return, call trace, and auto redial.

(265) **Virtual private line** -- Circuits or bandwidths, between fixed locations, that are available on demand and that can be dynamically allocated.

(266) **Voice carryover** -- A technology that allows an individual who is hearing-impaired to speak directly to the other party in a telephone conversation and to use specialized telecommunications devices to receive communications through the telecommunications relay service operator.

(267) **Voice over Internet Protocol (VoIP)** -- The technology used to transmit voice communications using Internet Protocol.

(268) **Voice over Internet Protocol service** -- A service that:

(A) uses Internet Protocol or a successor protocol to enable a real-time, two-way voice communication that originates from or terminates to the user's location in Internet Protocol or a successor protocol;

(B) requires a broadband connection from the user's location; and

(C) permits a user generally to receive a call that originates on the public switched telephone network and to terminate a call to the public switched telephone network.

(269) **Volume insensitive costs** -- The costs of providing a basic network function (BNF) that do not vary with the volume of output of the services that use the BNF.

(270) **Volume sensitive costs** -- The costs of providing a basic network function (BNF) that vary with the volume of output of the services that use the BNF.

(271) **Wireless provider** -- A provider that:

(A) provides commercial mobile radio service as defined in paragraph (40) of this section; or

(B) utilizes fixed wireless technology to provide local exchange service.

(272) **Wholesale service** -- A telecommunications service is considered a wholesale service when it is provided to a telecommunications utility and the use of the service is to provide a retail service to residence or business end-user customers.

(273) **Working capital requirements** -- The additional capital required to fund the increased level of accounts receivable necessary to provide telecommunications service.

(274) **"0-" call** -- A call made by the caller dialing the digit "0" and no other digits within five seconds. A "0-" call may be made after a digit (or digits) to access the local network is (are) dialed.

(275) **"0+" call** -- A call made by the caller dialing the digit "0" followed by the terminating telephone number. On some automated call equipment, a digit or digits may be dialed between the "0" and the terminating telephone number.

(276) **311 answering point** -- A communications facility that:

(A) is operated, at a minimum, during normal business hours;

(B) is assigned the responsibility to receive 311 calls and, as appropriate, to dispatch the non-emergency police or other governmental services, or to transfer or relay 311 calls to the governmental entity;

(C) is the first point of reception by a governmental entity of a 311 call; and

(D) serves the jurisdictions in which it is located or other participating jurisdictions.

(277) **311 service** -- A telecommunications service provided by a certificated telecommunications provider through which the end user of a public telephone system has the ability to reach non-emergency police and other governmental services by dialing the digits 3-1-1. 311 service must contain the selective routing feature or other equivalent state-of-the-art feature.

(278) **311 service request** -- A written request from a governmental entity to a CTU requesting the provision of 311 service. A 311 service request must:

(A) be in writing;

(B) contain an outline of the program the governmental entity will pursue to adequately educate the public on the 311 service;

(C) contain an outline from the governmental entity for implementation of 311 service;

(D) contain a description of the likely source of funding for the 311 service (i.e., from general revenues, special appropriations, etc.); and

(E) contain a listing of the specific departments or agencies of the governmental entity that will actually provide the non-emergency police and other governmental services.

(279) **311 system** -- A system of processing 311 calls.

(280) **9-1-1 administrative entity** -- A regional planning commission as defined in Texas Health and Safety Code §771.001(10) or an emergency communication district as defined in Texas Health and Safety Code §771.001(3).

(281) **9-1-1 database management services provider** -- An entity designated by a 9-1-1 administrative entity to provide 9-1-1 database management services that support the provision of 9-1-1 services.

(282) **9-1-1 database services** -- Services purchased by a 9-1-1 administrative entity that accepts, processes, and validates subscriber record information of telecommunications providers for purposes of selective routing and automatic location identification, and that may also provide statistical performance measures.

(283) **9-1-1 network services** -- Services purchased by a 9-1-1 administrative entity that routes 9-1-1 calls from an E9-1-1 selective router, 9-1-1 tandem, next generation 9-1-1 system, Internet Protocol-based 9-1-1 system or its equivalent to public safety answering points or a public safety answering point network.

(284) **9-1-1 network services provider** -- A CTU designated by the appropriate 9-1-1 administrative entity to provide 9-1-1 network services in a designated area.

(285) **911 system** -- A system of processing emergency 911 calls, as defined in Texas Health and Safety Code §772.001, as may be subsequently amended.

(286) **9-1-1 selective routing tandem switch** -- A switch located in a telephone central office that is equipped to accept, process, and route 9-1-1 calls to a predetermined, specific location. Also known as E9-1-1 control office or E9-1-1 selective router.

(287) **9-1-1 service** -- As defined in Texas Health and Safety Code §771.001(6) and §772.001(6).

(288) **9-1-1 service agreement** -- A contract addressing the 9-1-1 service arrangements for a local area that the appropriate 9-1-1 administrative entity enters into.

(289) **9-1-1 service arrangement** -- Each particular arrangement for 9-1-1 emergency service specified by the appropriate 9-1-1 administrative entity for the relevant rate centers within its jurisdictional area and that is subject to a 9-1-1 service agreement.

§26.6. Cost of Copies of Public Information.

The rules set forth in 1 TAC §§111.61 – 111.70 (relating to Costs of Copies of Public Information) will apply to copies of public records made at the commission.

§26.7. Local Exchange Company Assessment.

(a) **Amount of assessment.** Each local exchange company subject to the jurisdiction of the commission shall pay an annual per-access-line assessment. The commission shall establish the assessment rate annually according to projected Public Utility Commission and Office of Public Utility Counsel expenditures for the current fiscal year related to implementation of the provisions of the Public Utility Regulatory Act (PURA) §52.060 and §53.308, divided by total industry access lines. The assessment shall be based upon access lines in existence during the preceding calendar year.

(b) **Notice of assessment.** Each year the commission shall calculate the assessment due from each local exchange company and so advise each company. The commission shall also advise companies of the address to which payments should be made and any identification or markings necessary for the payment to be properly credited.

(c) **Payment of assessment.** All assessments required by this section shall be due and payable to the State of Texas on or before December 10th of each year.

§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) Penalties for Class C violations may not exceed $1,000 per violation per day.

(B) The following violations are Class C 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 certificated 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) Penalties for Class B violations may not exceed $5,000 per violation per day.

(B) All violations not specifically enumerated as a Class C or Class A violation shall be considered Class B violations.

(3) **Class A violations.**

(A) Penalties for Class A violations may not exceed $25,000 per violation per day.

(B) The following types of violations are Class A violations if they create economic harm in excess of $5,000 to a person or persons, property, or the environment, or create an economic benefit to the violator in excess of $5,000; create a hazard or potential hazard to the health or safety of the public; or cause a risk to the reliability of the telecommunications network or a portion thereof.

(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 paragraph (3)(B) of this subsection that creates a hazard or potential hazard to the health or safety of the public;

(ix) A violation not otherwise enumerated in this paragraph (3)(B) of this subsection that creates economic harm to a person or persons, property, or the environment in excess of $5,000, or creates an economic benefit to the violator in excess of $5,000; and

(x) A violation not otherwise enumerated in this paragraph (3)(B) of this subsection that causes a risk to the reliability of the telecommunications network or a portion thereof.

(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.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter B. CUSTOMER SERVICE AND PROTECTION.

§26.21. General Provisions of Customer Service and Protection Rules.

(a) **Purpose.** The purpose of the rules in this subchapter is to ensure certain customer protections in the provision of local telecommunications service by certificated telecommunications utilities (CTUs) and to establish minimum customer service standards that a CTU shall meet in providing telecommunications service to the public. Nothing in these rules should be interpreted as preventing a CTU from adopting stronger customer protection policies for all customers or for differing groups of customers, as long as those policies do not violate the prohibitions against discrimination in subsection (b) of this section.

(b) **Prohibition against discrimination.**

(1) This subchapter prohibits CTUs from discrimination based on race, nationality, color, religion, sex, marital status, income level, source of income, and from unreasonable discrimination on the basis of geographic location.

(2) CTUs shall establish an anti-discrimination policy and shall maintain all appropriate information needed to demonstrate compliance.

(3) Upon request by a customer or the commission, a CTU shall provide its anti-discrimination policy and all information necessary to demonstrate compliance with anti-discrimination requirements.

(c) **Other prohibitions.** No CTU shall engage in any fraudulent, unfair, misleading, deceptive, or anti-competitive practice.

(d) **Protections.** All customer protections and disclosures established by the Fair Credit Reporting Act (15 U.S.C. §§1681, *et seq*.) and the Truth in Lending Act (15 U.S.C. §§1601, *et seq*.) are applicable where appropriate whether or not explicitly stated in the rules.

(e) **Definitions.** The following words and terms when used in this subchapter shall have the following meanings, unless the context indicates otherwise.

(1) **Applicant** — A person who applies for service for the first time or reapplies after disconnection of service.

(2) **Customer** — A person who is currently receiving service from a CTU in the person's own name or the name of the person's spouse.

(3) **Days** — Refers to calendar days.

(4) **In writing** —Written words memorialized on paper or sent electronically.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter B. CUSTOMER SERVICE AND PROTECTION.

§26.22. Request for Service.

(a) **Dominant certificated telecommunications utility (DCTU).**

(1) Every DCTU shall provide local telecommunications service to each qualified applicant for service and to each of its customers within its certificated area in accordance with §26.54(c)(1) of this title (relating to Service Objectives and Performance Benchmarks). A deregulated company that holds a certificate of operating authority is not obligated to be a provider of last resort. A transitioning company is not obligated to be a provider of last resort in a deregulated market.

(2) If construction, such as line extensions or facilities, is required for installation of local telecommunications service:

(A) the DCTU shall complete the construction within 90 days or within a time period agreed to by the customer and the DCTU after the applicant has established satisfactory credit in accordance with §26.24 of this title (relating to Credit Requirements and Deposits), made satisfactory payment arrangements for construction charges, and complied with state and municipal regulations;

(B) the DCTU shall contact the applicant for service within ten work days of receipt of the application and give the applicant an estimated completion date and an estimated cost for all charges to be incurred by the applicant; and

(C) following the assessment of any necessary construction, the DCTU shall explain to the applicant any construction cost options such as rebates, sharing of construction costs between the DCTU and the applicant, or sharing of costs between the applicant and other applicants.

(3) A DCTU may require an applicant for service to establish satisfactory credit or to pay a deposit in accordance with §26.24 of this title.

(b) **Nondominant certificated telecommunications utility (NCTU).**

(1) This subsection does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under PURA §52.154.

(2) Every NCTU shall provide local telecommunications service to applicants within its certificated area who have accepted the NCTU's terms and conditions of service and in accordance with the customer safeguards in §26.272(i) of this title (relating to Interconnection).

(3) If construction, such as line extensions or facilities, is required for installation of local telecommunications service:

(A) the NCTU shall contact the applicant for service within ten work days of receipt of the application and give the applicant an estimated completion date and an estimated cost for all charges to be incurred by the applicant; and

(B) following the assessment of any necessary construction, the NCTU shall explain to the applicant any construction cost options such as rebates, sharing of construction costs between the NCTU and the applicant, or sharing of costs between the applicant and other applicants.

§26.23. Refusal of Service.

(a) **Dominant certificated telecommunications utility (DCTU).**

(1) A DCTU is relieved of its provider of last resort (POLR) obligations in a market if the market has been deregulated pursuant to Public Utility Regulatory Act Chapter 65. A DCTU with POLR obligations may refuse to provide an applicant with basic local telecommunications service only for one or more of the following reasons:

(A) Applicant's facilities inadequate. The applicant's installation or equipment is known to be hazardous or of such character that satisfactory service cannot be given.

(B) Use of prohibited equipment or attachments. The applicant fails to comply with the DCTU's tariffs pertaining to operation of nonstandard equipment or unauthorized attachments that interfere with the service of others.

(C) Failure to pay guarantee. The applicant has acted as a guarantor for another customer of the DCTU and fails to pay the guaranteed amount, where such guarantee was made in writing to the DCTU and was a condition of service.

(D) Intent to deceive. The applicant requests service at a location where another customer received or continues to receive service, the other customer's bill from the DCTU is unpaid at that location, and the DCTU can prove that the change of account holder and billing name is made to avoid or evade payment of an outstanding bill owed to the DCTU.

(E) For indebtedness.

(i) If a residential applicant owes a debt to any DCTU for:

(I) tariffed local telecommunications service, except as provided in §26.29 of this title (relating to Prepaid Local Telephone Service (PLTS); or

(II) long distance charges after toll blocking was imposed as provided in §26.28 of this title (relating to Suspension or Disconnection of Service).

(ii) If a non-residential applicant owes a debt to any DCTU for tariffed non-residential local telecommunications service, including long distance charges.

(iii) If an applicant's indebtedness is in dispute, basic local telecommunications service shall be provided upon the applicant's compliance with the deposit requirements in §26.24 of this title (relating to Credit Requirements and Deposits).

(F) Refusal to pay a deposit. The applicant refuses to pay a deposit if the applicant is required to do so under §26.24 of this title.

(G) Failure to comply with regulations. The applicant fails to comply with all applicable state and municipal regulations.

(2) **Applicant's recourse.**

(A) If a DCTU has refused to serve a residential applicant, the DCTU must send the applicant notice in writing within five work days of the determination to refuse service:

(i) of the reason or reasons for its refusal;

(ii) that the applicant will be eligible for service if the applicant remedies the reason or reasons for refusal and complies with the DCTU's tariffs and terms and conditions of service;

(iii) that the applicant may request a supervisory review by the DCTU and may file a complaint with the commission as described in §26.30 of this title (relating to Complaints); and

(iv) that no telecommunications utility is permitted to:

(I) refuse service on the basis of race, color, sex, nationality, religion, marital status, income level, or source of income; nor

(II) unreasonably refuse service on the basis of geographic location.

(B) Additionally, the DCTU must inform applicants eligible for prepaid local telephone service under §26.29 of this title that this service is available if they are not otherwise eligible for basic local telecommunications service.

(3) **Insufficient grounds for refusal to serve.** The following are not sufficient grounds for refusal of basic local telecommunications service to an applicant by a DCTU:

(A) delinquency in payment for service by a previous occupant of the premises to be served;

(B) failure to pay for any charges that are not provided in the DCTU's tariffs on file at the commission;

(C) failure to pay a bill that includes more than six months of underbilling unless the underbilling is the result of theft of service by the applicant;

(D) failure to pay the bill of another customer at the same address except where the change of account holder and billing name is made to avoid or evade payment of that bill; and

(E) failure of a residential applicant to pay for any charges other than for local telecommunications service except for long distance charges incurred after toll blocking was imposed as provided in §26.28 of this title.

(b) **Nondominant certificated telecommunications utility (NCTU).**

(1) This subsection does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under PURA §52.154.

(2) An NCTU may refuse to provide an applicant with basic local telecommunications service for:

(A) the applicant's failure to comply with all applicable federal, state, and municipal regulations; or

(B) any other reason that does not violate applicable federal, state, or municipal statutes, rules, or regulations.

(3) **Applicant's recourse.**

(A) If an NCTU who offers residential service has refused to provide a residential applicant with basic local telecommunications service, the NCTU must inform the applicant of the determination to refuse service:

(i) of the reason or reasons for its refusal; and

(ii) that the applicant will be eligible for service if the applicant remedies the reason or reasons for refusal and complies with the NCTU's terms and conditions of service.

(B) The information required by subparagraph (A) of this paragraph shall be sent to the applicant in writing within five working days, if required by the federal Equal Credit Opportunity Act, 15 U.S.C. §1691 et seq., or if it is requested by the applicant. The NCTU shall inform the applicant that the applicant may request a supervisory review by the NCTU and may file a complaint with the commission as described in §26.30 of this title.

(4) **Insufficient grounds for refusal to serve.** The following are not sufficient grounds for refusal of basic local telecommunications service to an applicant by an NCTU:

(A) delinquency in payment for service by a previous occupant of the premises to be served;

(B) failure to pay for any charges that are not provided in the NCTU's tariffs;

(C) failure to pay a bill that includes more than six months of underbilling unless the underbilling is the result of theft of service by the applicant;

(D) failure to pay the bill of another customer at the same address except where the change of account holder and billing name is made to avoid or evade payment of that bill; and

(E) failure of a residential applicant to pay for any charges other than for local telecommunications service except for long distance charges incurred after toll blocking was imposed as provided in §26.28 of this title.

§26.24. Credit Requirements and Deposits.

(a) **Dominant certificated telecommunications utility (DCTU).**

(1) **Credit requirements for permanent residential applicants.**

(A) A DCTU may require a residential applicant for local telecommunications service to establish and maintain satisfactory credit as a condition of providing service.

(i) Establishment of credit or payment of a deposit shall not relieve any customer from complying with the DCTU's requirements for prompt payment of bills.

(ii) The creditworthiness of spouses established during the last 12 months of shared service prior to their divorce will be equally applied to both spouses for 12 months immediately after their divorce.

(B) A residential applicant can demonstrate satisfactory credit using one of the criteria listed in clauses (i) - (iv) of this subparagraph.

(i) Payment record. The residential applicant:

(I) has been a customer of any DCTU for residential local telecommunications service within the last two years;

(II) is not delinquent in payment of any residential DCTU service;

(III) during the last 12 consecutive months of service was not late in paying a bill more than once and did not have service disconnected for nonpayment; and

(IV) upon request, shall receive a letter of credit history from the applicant's previous DCTU. DCTUs are required to keep payment history for two years after termination of service to a customer.

(ii) Other means. The residential applicant demonstrates a satisfactory credit rating by appropriate means, including, but not limited to, the production of:

(I) generally accepted credit history;

(II) letters of credit reference;

(III) the names of credit references which may be quickly and inexpensively contacted by the utility; or

(IV) ownership of substantial equity that is easily liquidated.

(iii) Senior applicant. The residential applicant is 65 years of age or older and does not have an outstanding residential service account balance incurred within the last two years with a DCTU.

(iv) Victim of family violence: The residential applicant has been determined to be a victim of family violence as defined in Texas Family Code §71.004, by a family violence center as defined in Texas Human Resources Code §51.002, by treating medical personnel, by law enforcement personnel, by the Office of a Texas District Attorney or County Attorney, by the Office of the Attorney General, or by a grantee of the Texas Equal Access to Justice Foundation. This

determination shall be evidenced by submission of a certification letter developed by the Texas Council on Family Violence.

(C) The DCTU may require the applicant to pay a deposit only if the applicant does not demonstrate satisfactory credit using the criteria in subparagraph (B) of this paragraph.

(2) **Credit requirements for non-residential applicants.** The DCTU may require a non-residential applicant to pay a deposit if the applicant's credit for service has not been demonstrated satisfactorily to the DCTU.

(3) **Credit requirements for temporary or seasonal service and for weekend residences.** The DCTU may establish credit policy and deposit requirements to reasonably protect it against the assumed risk for temporary or seasonal service or service to a weekend residence, as long as the policy and requirements are applied in a uniform and nondiscriminatory manner. The DCTU shall return deposits according to guidelines set out in paragraph (11) of this subsection.

(4) **Initial deposits.**

(A) A residential applicant or customer who is required to pay an initial deposit may provide the DCTU with a written letter of guarantee instead of paying a cash deposit.

(B) A DCTU shall not require an initial deposit from an existing customer unless the customer was late paying a bill more than once during the last 12 months of service or had service disconnected for nonpayment. The customer may be required to pay this initial deposit within ten days after issuance of a written disconnection notice that requests such deposit. Instead of an initial deposit, the customer may pay the total amount due on the current bill by the due date of the bill, provided the customer has not exercised this option in the previous 12 months.

(5) **Additional deposits.**

(A) During the first 12 months of service, the DCTU may request an additional deposit if the customer's actual usage:

(i) is at least three times estimated usage (or three times average usage of the three most recent bills);

(ii) exceeds $150; and

(iii) exceeds 150% of the security held.

(B) A DCTU may also require an additional deposit if:

(i) actual billings of a residential customer are at least twice the amount of the estimated billings after two billing periods;

(ii) actual billings of a non-residential customer are at least twice the amount of the estimated billings; and

(iii) a suspension or disconnection notice was issued for the account within the previous 12 months.

(C) A DCTU may require an additional deposit be paid within ten days after issuing written notice of suspension or disconnection and requesting an additional deposit.

(D) Instead of an additional deposit, a residential customer may elect to pay the total amount due on the current bill by the due date of the bill, provided the customer has not exercised this option in the previous 12 months.

(E) The DCTU may disconnect service if the additional deposit or the current usage payment is not paid within ten days of request provided a written suspension or disconnection notice has been issued to the customer. A suspension or disconnection notice may be issued concurrently with the written request for the additional deposit or current usage payment.

(6) **Amount of deposit.** When a DCTU requires a deposit:

(A) The total of all deposits, initial and additional, shall not exceed an amount equivalent to one-sixth of the estimated annual billing, except as provided in §26.29 of this title (relating to Prepaid Local Telephone Service).

(B) The estimated annual billings shall not include charges that are not in a DCTU's tariff.

(C) For residential applicants and customers:

(i) estimated annual billings:

(I) shall not include long distance charges from other service providers;

(II) may include charges for tariffed local telecommunications services;

(III) may include charges for intraLATA toll only if the DCTU or its affiliate is providing this service to the customer; and

(IV) may include charges for interLATA toll only if the DCTU or its affiliate is providing this service to the customer.

(ii) the deposit amount related to local telecommunications service and long distance service shall be separately identified.

(iii) the deposit amount related only to basic local telecommunications service may be required as a condition for providing basic local telecommunications services.

(D) For non-residential applicants and customers, estimated annual billings may include long distance charges only when the DCTU bills those charges.

(7) **Interest on deposits.**

(A) Each DCTU requiring deposits shall pay interest, compounded annually, on these deposits. The annual rate shall be at least equal to that set by the commission on or before December 1 of the preceding calendar year, pursuant to Texas Utilities Code Annotated §183.003 (relating to Rate of Interest).

(i) If a deposit is refunded within 30 days of receipt, no interest payment is required.

(ii) If the utility keeps the deposit more than 30 days, payment of interest shall be made retroactive to the date of deposit.

(B) Payment of the interest to the customer shall be made annually, if requested by the customer, or at the time the deposit is returned or credited to the customer's account.

(C) The deposit shall draw interest until the date it is returned or credited to the customer's account.

(8) **Notification to applicants and customers.** When a deposit is required, the DCTU shall explain to applicants or customers the terms and conditions related to deposits and refunds.

(9) **Records of deposits.** The DCTU shall:

(A) Keep records to show:

(i) the name and address of each depositor;

(ii) the amount and date of the deposit; and

(iii) each transaction concerning the deposit;

(B) Issue a receipt of deposit to each applicant or customer paying a deposit and provide means for a depositor to establish claim if the receipt is lost;

(C) Keep deposit records for one year after a deposit is refunded;

(D) Maintain each unclaimed deposit for at least four years;

(E) Make a reasonable effort to return an unclaimed deposit;

(F) Upon the sale or transfer of any DCTU or any of its operating units, provide the buyer with all deposit records.

(10) **Guarantees of residential customer accounts.**

(A) A guarantee between a DCTU and a guarantor must be in writing and shall be for no more than the amount of deposit the DCTU would require on the customer's account pursuant to paragraph (6) of this subsection. The amount of the guarantee shall be clearly indicated in the signed agreement.

(B) The guarantee shall be voided and returned to the guarantor according to the provisions of paragraph (11) of this subsection.

(C) Upon default by a residential customer, the guarantor of that customer's account shall be responsible for the unpaid balance of the account only up to the amount in the written agreement.

(D) The DCTU shall provide written notification to the guarantor of the customer's default, the amount owed by the guarantor, and the due date for the amount owed.

(i) The DCTU shall allow the guarantor 16 days from the date of notification to pay the amount owed on the defaulted account. If the sixteenth day falls on a holiday or weekend, the due date shall be the next work day.

(ii) The DCTU may transfer the amount owed on the defaulted account to the guarantor's own service bill provided the guaranteed amount owed is identified separately on the bill.

(E) The DCTU may disconnect service to the guarantor for nonpayment of the guaranteed amount only if the disconnection was included in the terms of the written agreement and only after proper notice as described by subparagraph (D) of this paragraph, and §26.28 of this title (relating to Suspension or Disconnection of Service).

(11) **Refunding deposits and voiding letters of guarantee.**

(A) If service is not connected, or is disconnected, the DCTU shall:

(i) promptly void and return to the guarantor all letters of guarantee on the account; or

(ii) provide written documentation that the contract has been voided; or

(iii) refund the applicant's or customer's deposit plus accrued interest on the balance in excess of the unpaid bills for service furnished.

(B) If residential service is disconnected, the DCTU shall ensure that the deposit amount for local telecommunications service is applied first to local telecommunications service charges.

(C) A transfer of service from one premise to another within the service area of the DCTU is not a disconnection.

(D) The DCTU shall promptly refund the deposit plus accrued interest to the customer, or void and return the guarantee, or provide written documentation that the contract has been voided, when the customer:

(i) paid bills for 12 consecutive residential billings or for 24 consecutive non-residential billings without having service disconnected for nonpayment;

(ii) was not late in paying a bill more than twice in the last 12 consecutive billings (24 for non-residential); and

(iii) is not delinquent in the payment of the current bill.

(E) If the customer does not meet the refund criteria in subparagraph (D) of this paragraph, the DCTU may retain the deposit and interest or the letter of guarantee.

(12) **Re-establishment of credit.**

(A) Before service is reconnected, the DCTU may require an applicant whose service was previously disconnected for nonpayment or theft of service, to reestablish credit and to pay:

(i) all amounts due the DCTU; or

(ii) execute a deferred payment agreement, if offered.

(B) The DCTU must prove that the amount due for services furnished and any other charges required as a condition of local service restoration are correct.

(C) The DCTU may require a residential applicant to pay or execute a deferred payment agreement only for the total amount due for tariffed local telecommunications service in order to receive basic local telecommunications service.

(13) **Customer credit and deposit information.** A DCTU shall safeguard customer credit and deposit information in accordance with §26.122 of this title (relating to Customer Propriety Network Information).

(b) **Non-dominant certificated telecommunications utility (NCTU).**

(1) **Credit requirements for permanent residential applicants.** An NCTU may require a residential applicant for local telecommunications service to establish and maintain satisfactory credit as a condition of providing service.

(A) Establishment of credit or payment of a deposit shall not relieve any customer from complying with the NCTU's requirements for prompt payment of bills.

(B) The creditworthiness of spouses established during the last 12 months of shared service prior to their divorce will be equally applied to both spouses for 12 months immediately after their divorce.

(2) **Amount of deposit.** When an NCTU requires a deposit:

(A) The total of all deposits, initial and additional, shall not exceed an amount equivalent to one-sixth of the estimated annual billing.

(B) For residential applicants and customers:

(i) estimated annual billings shall not include long distance charges from other non-affiliated service providers;

(ii) the deposit amount related to local telecommunications service and long distance service shall be separately identified; and

(iii) the deposit amount related only to basic local telecommunications service may be required as a condition for providing basic local telecommunications services.

(3) **Interest on deposits.**

(A) Each NCTU requiring deposits shall pay interest, compounded annually, on these deposits. The annual rate shall be at least equal to that set by the commission on or before December 1 of the preceding calendar year, pursuant to Texas Utilities Code Annotated §183.003 (relating to Rate of Interest).

(i) If a deposit is refunded within 30 days of receipt, no interest payment is required.

(ii) If the utility keeps the deposit more than 30 days, payment of interest shall be made retroactive to the date of deposit.

(B) Payment of interest shall be made at the time a deposit is returned or credited to the customer's account.

(C) The deposit shall draw interest until the day it is returned or credited to the customer's account.

(4) **Notification to applicants and customers.** When a deposit is required, the NCTU shall explain to applicants or customers the terms and conditions related to deposits and refunds.

(5) **Records of deposits.** The NCTU shall:

(A) Keep records to show:

(i) the name and address of each depositor;

(ii) the amount and date of the deposit; and

(iii) each transaction concerning the deposit;

(B) Issue a receipt of deposit to each applicant or customer paying a deposit and provide means for a depositor to establish claim if the receipt is lost;

(C) Keep deposit records for one year after a deposit is refunded;

(D) Maintain each unclaimed deposit for at least four years;

(E) Make a reasonable effort to return an unclaimed deposit; and

(F) Upon the sale or transfer of any NCTU or any of its operating units, provide the buyer with all deposit records.

(6) **Refunding deposits.**

(A) If service is not connected, or is disconnected, the NCTU shall promptly refund the customer's deposit plus accrued interest on the balance in excess of the unpaid bills for service furnished.

(B) If residential service is disconnected, the NCTU shall ensure that the deposit amount for local telecommunications service is applied first to local telecommunications service charges.

(C) An NCTU shall refund the deposit and interest when the customer meets the NCTU's refund criteria.

(7) **Customer credit and deposit information.** An NCTU shall safeguard customer credit and deposit information in accordance with §26.122 of this title.

(c) **NCTU implementation.** NCTUs shall implement this section no later than March 1, 2001.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter B. CUSTOMER SERVICE AND PROTECTION.

§26.25. Issuance and Format of Bills.

(a) **Application.** The provisions of this section apply to residential-customer bills issued by all certificated telecommunications utilities (CTUs). Only subsections (d)(3), (e)(1)(C) and (e)(7) of this section apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under PURA §52.154.

(b) **Purpose.** The purpose of this section is to specify the information that should be included in a user-friendly, simplified format for residential customer bills that include charges for local exchange telephone service.

(c) **Frequency of bills and billing detail.** Bills of CTUs shall be issued monthly for any amount unless the bill covers service that is for less than one month, or unless through mutual agreement between the company and the customer a less frequent or more frequent billing interval is established. Through mutual agreement with the CTU, a customer may request and receive a bill with more detailed or less detailed information than otherwise would be required by the provisions of this section if the CTU also will provide the customer with detailed information on request.

(d) **Billing information.**

(1) All residential customers shall receive their bills via the United States mail, or other mail service, unless the customer agrees with the CTU to receive a bill through different means, such as electronically via the Internet.

(2) Customer billing sent through the United States mail, or other mail service, shall be sent in an envelope or by any other method that ensures the confidentiality of the customer's telephone number and/or account number.

(3) A CTU shall maintain by billing cycle the billing records for each of its accounts for at least two years after the date the bill is mailed. The billing records shall contain sufficient data to reconstruct a customer's billing for a given month. A copy of a customer's billing records may be obtained by the customer on request.

(e) **Bill content requirements.** The following requirements apply to bills sent via the U.S. mail, or other mail service. Bills rendered via the Internet shall provide the information specified in this subsection in a readily discernible manner.

(1) The first page of each residential customer's bill containing charges for local exchange telephone service shall include the following information, clearly and conspicuously displayed:

(A) the grand total amount due for all services being billed;

(B) the payment due date; and

(C) a notification of any change in the identity of a service provider. The notification should describe the nature of the relationship with the customer, including the description of whether the new service provider is the presubscribed local exchange or interexchange carrier. For purposes of this subparagraph, "new service provider" means a service provider that did not bill the customer for services during the service provider's last billing cycle. This definition shall include only providers that have continuing relationships with the customer that will result in periodic charges on the customer's bill, unless the service is subsequently canceled. This notification may be accomplished with a sentence that directs the customers to details of this change located elsewhere on the bill.

(D) If possible, the first page of the bill shall list each applicable telephone number or account number for which charges are being summarized on the bill. If such inclusion is not possible, the first page shall show the main telephone number or account number, and subsequent pages shall clearly identify the additional numbers.

(2) Each residential customer's bill shall include the following information in a clear and conspicuous manner that provides customers sufficient information to understand the basis and source of the charges in the bill:

(A) the service descriptions and charges for local service provided by the billing CTU;

(B) the service descriptions and charges for non-local services provided by the billing CTU;

(C) the service description, service provider's name, and charges for any services provided by parties other than the billing CTU, with a separate line for each different provider;

(D) applicable taxes, fees and surcharges, showing the specific amount associated with each charge;

(E) the billing period or billing end date; and

(F) an identification of those charges for which non-payment will not result in disconnection of basic local telecommunications service, along with an explicit statement that failure to pay these charges will not result in the loss of basic local service; or an identification of those charges that must be paid to retain basic local telecommunications service, along with an explicit statement that failure to pay these charges will result in the loss of basic local service.

(3) Charges must be accompanied by a brief, clear, non-misleading, plain-language description of the service being rendered. The description must be sufficiently clear in presentation and specific enough in content to enable customers to accurately assess the services for which they are being billed. Additionally, explanations shall be provided for any non-obvious abbreviations, symbols, or acronyms used to identify specific charges. The CTU shall use the term or acceptable abbreviation, in paragraph (7) of this subsection to the extent they apply to the customer's bill. If an abbreviation other than the acceptable abbreviation is used for the term, then the term must also be identified on the customer's bill. Terms and abbreviations may be completely capitalized, partially capitalized, not capitalized, hyphenated, or not hyphenated.

(4) Charges for bundled-service packages that include basic local telecommunications service are not required to be separately stated. However, a brief, clear, non-misleading, plain-language description of the services included in a bundled-service package is required to be provided either in the description or as a footnote.

(5) Each customer's bill shall include specific per-call detail for time-sensitive charges, itemized by service provider and by telephone or account number (if the customer's bill is for more than one such number). Each customer's bill shall include the rate and specific number of billing occurrences for per-use services, itemized by service provider and by telephone or account number. Additionally, time-sensitive charges and per-use charges may be displayed as subtotals in summary sections of the bill.

(6) Bills shall provide a clear and conspicuous toll-free number that a customer can call to resolve disputes and obtain information from the CTU. If the CTU is billing the customer for any services from another service provider, the bill shall identify the name of the service provider and provide a toll-free number that the customer can call to resolve disputes or obtain information from that service provider.

(7) Defined terms.

(A) **Federal excise tax --** Federal tax assessed on non-usage sensitive basic local service that is billed separately from long distance service. Acceptable abbreviation: Fed excise tax.

(B) **Federal subscriber line charge --** A charge that the Federal Communications Commission (FCC) allows a CTU to impose on its customers to recover costs associated with interstate access to the local telecommunications networks. The FCC does not require a CTU company to impose this charge, and the CTU does not remit the charge to the federal government. The charge may be used by the CTU to pay for a part of the cost of lines, wires, poles, conduit, equipment and facilities that provide interstate access to the local telecommunications network. Acceptable abbreviation: Fed subscriber line chg.

(C) **Federal universal service fee --** A federal fee for a fund that supports affordable basic phone service to all Americans, including low-income customers, schools, libraries, and rural health care providers. CTUs impose this fee to cover their required support for the fund. The fee is set by the FCC. Acceptable abbreviation: Fed universal svc fee.

(D) **Municipal right-of-way fee --** A fee used to compensate municipalities for the use of their rights-of-way. Acceptable abbreviation: Municipal ROW fee.

(E) **Texas universal service --** A state fee for a fund that supports affordable service to customers in high-cost rural areas, funds the Relay Texas service and related assistance for the hearing-disabled, and funds telecommunications services discounts for low-income customers (Lifeline). The fee is set by the Public Utility Commission.

(F) **9-1-1 fee --** A fee used to fund the 9-1-1 telephone network that allows callers to reach a public safety agency when they dial the digits "9-1-1." The amount of the fee varies by region and is set by the Texas Commission on State Emergency Communications.

(G) **9-1-1 equalization fee --** A fee used to provide financial support for regions where the 9-1-1 fee does not fully offset the cost of 9-1-1 service. The fee is imposed on each customer receiving intrastate long-distance service. The fee is set by the Texas Commission on State Emergency Communications.

(f) **Compliance review of bill formats.** A CTU shall file for review a copy of any portion of its bill format that has not previously been reviewed and approved by the commission pursuant to this section. The CTU will be advised if the format does or does not comply with the requirements of this section. Two alternative projects will be established for such reviews. CTUs may submit new or altered bill formats in either of these projects as follows:

(1) **Expedited review.** The commission staff shall establish a project for expedited reviews. CTUs may submit proposed new bills or bill format changes prior to implementation in the expedited review project. A notice of sufficiency or a notice of deficiency will be issued to the CTU within 15 business days. The CTU may appeal a notice of deficiency by requesting its submission be docketed for further review or may respond with a revised submission that corrects the deficiency within ten business days of the deficiency notice. The CTU's revised submission will be reviewed and either a notice of sufficiency or a notice of deficiency will be issued within 15 business days. This process will be repeated until the CTU's submission has received a notice of sufficiency or the CTU has requested that its submission be docketed as a contested case. A contested case may also be requested by commission staff to resolve disputes regarding the CTU's submission.

(2) **Annual review.** The commission staff shall establish a project for annual reviews. CTUs may choose to file bill format changes in the annual review project. If the CTU's bill format change has already been approved pursuant to paragraph (1) of this subsection, the CTU does not need to file the same changes under the annual review process. Submissions for annual review must be made between September 1st and October 1st each year. All submissions shall be responded to with a notice of sufficiency or deficiency issued no later than November 15th of that year. A CTU may appeal a notice of deficiency by requesting its submission be docketed for further review or may respond with a revised submission that corrects the deficiency within ten business days of the deficiency notice. Revised submissions will be reviewed within 15 business days and a new notice of either sufficiency or deficiency will be issued. This process will be repeated until the CTU's submission has received a notice of sufficiency or the CTU has requested that its submission be docketed as a contested case. A contested case may also be requested by commission staff to resolve disputes regarding the CTU's submission.

(g) **Effective date.** The effective date of this section is June 1, 2010.

§26.26. Foreign Language Requirements.

(a) **Notification requirement.** A certificated telecommunications utility (CTU) shall inform Spanish-speaking applicants and customers how they can get the information in subsection (b)(1), (2), (3), and (6) of this section in Spanish. This may be accomplished by an informational sentence (tagline) in English and Spanish indicating that the information is available in Spanish, upon request.

(b) **Spanish information requirement.** A CTU shall provide the following in Spanish, upon the request of an applicant or customer:
- (1) applicant and customer rights information contained in this subchapter;
- (2) information on rates, key terms and conditions;
- (3) new services, discount programs, and promotions;
- (4) access to repair service and customer service;
- (5) answers to billing inquiries; and
- (6) ballots for services requiring a vote by ballot.

(c) **Additional information requirement.** A CTU that advertises, promotes, or markets a service or product in any language other than English or Spanish shall provide the information in subsection (b) of this section related to that service or product in that language, upon the request of an applicant or customer.

(d) **Non-dominant certificated telecommunications utility (NCTU) implementation.** NCTUs shall implement this section no later than March 1, 2001.

§26.27. Bill Payment and Adjustments.

(a) **Dominant certificated telecommunications utility (DCTU).**

(1) **Bill due date.** The bill provided to the customer shall include the payment due date, which shall not be less than 16 days after issuance.

(A) The issuance date is the postmark date on the envelope containing the bill or the issuance date on the bill if there is no postmark or envelope.

(B) Payment for service is delinquent if not received at the DCTU or at the DCTU's authorized payment agency by close of business on the due date.

(C) If the sixteenth day falls on a holiday or weekend, then the due date shall be the next work day after the sixteenth day.

(2) **Penalty on delinquent bills for retail service.** A DCTU providing any service to the state, including service to an agency in any branch of government, shall not assess a fee, penalty, interest, or other charge to the state for delinquent payment of a bill.

(3) **Billing adjustments.**

(A) Service interruptions. In the event a customer's service is interrupted other than by the negligence or willful act of the customer, and it remains interrupted for 24 hours or longer after being reported and after access to the premises is made available, an appropriate refund shall be made to the customer.

(i) The amount of refund shall be:

(I) determined on the basis of the known period of interruption, generally beginning from the time the service interruption is first reported; and

(II) the refund to the customer shall be the proportionate part of the month's flat rate charges for the period of days and that portion of the service facilities rendered useless or inoperative.

(ii) The refund may be made by a credit on a subsequent bill.

(B) Overbilling. If charges are found to be higher than authorized by the DCTU's tariffs or the terms and conditions of service, an appropriate refund shall be made to the customer.

(i) The refund shall be made for the entire period of the overbilling.

(ii) If the overbilling is corrected within three billing cycles of the initial bill in error, interest is not required to be paid on the overcharge.

(iii) If the overbilling is not corrected within three billing cycles of the initial bill in error, interest shall be paid on the amount of the overcharges. The minimum interest to be paid shall be based on the rate set by the commission on or before December 1 of the preceding calendar year, compounded monthly, and accruing from the date of payment or the initial date of the bill in error.

(iv) The refund may be made by a credit on a subsequent bill, unless the customer requests otherwise.

(C) Underbilling. If charges are found to be lower than authorized by the DCTU's tariffs or terms and conditions of service, or if the DCTU failed to bill the customer for service, then:

(i) The customer may be backbilled for the amount that was underbilled for no more than six months from the date the error was discovered unless underbilling is a result of theft of service by the customer.

(ii) Service may be disconnected if the customer fails to pay charges arising from an underbilling.

(iii) If the underbilling is $50 or more, the DCTU shall offer the customer a deferred payment plan option for the same length of time as that of the

underbilling. A deferred payment plan need not be offered to a customer whose underpayment is due to theft of service.

(iv) Interest on underbilled amounts shall:

(I) not be charged unless such amounts are found to be the result of theft of service by the customer; and

(II) not exceed an amount based on the rate set by the commission on or before December 1 of the preceding calendar year, compounded monthly, and accruing from the day the customer is found to have first tampered with, bypassed, or diverted service.

(4) **Disputed bills.** If there is a dispute between a customer and a DCTU about any bill for DCTU service, the DCTU shall:

(A) investigate and report the results to the customer; and

(B) inform the customer of the complaint procedures of the commission in accordance with §26.30 of this title (relating to Complaints), if the dispute is not resolved.

(5) **Notice of alternative payment programs or payment assistance.** When a customer contacts a DCTU and indicates inability to pay a bill or need of assistance with payment, the DCTU shall inform the customer of all alternative payment options and payment assistance programs available from the DCTU, such as payment arrangements, deferred payment plans, and disconnection moratoriums for the ill, as applicable, and of the eligibility requirements and application procedure for each.

(6) **Payment arrangement.** A payment arrangement is any agreement between the DCTU and a customer that allows the customer to pay the outstanding bill after its due date but before the due date of the next bill.

(A) A payment arrangement may be established in person or by telephone.

(B) If the DCTU issued a suspension or disconnection notice before the payment arrangement was made, that suspension or disconnection shall be suspended until after the due date for the payment arrangement.

(C) If a customer does not fulfill the obligations of the payment arrangement, the DCTU may suspend or disconnect service after the later of the due date for the payment arrangement or the suspension or disconnection date indicated in the notice in accordance with §26.28 of this title (relating to Suspension or Disconnection of Service), without issuing an additional notice.

(7) **Deferred payment plan.** A deferred payment plan is any written agreement between the DCTU and a customer that allows a customer to pay an outstanding bill in installments that extend beyond the due date of the next bill.

(A) The terms of a deferred payment plan may be established in person or by telephone, but must be put in writing to be effective.

(B) The DCTU shall offer a deferred payment plan to any residential customer, including a guarantor of any residential customer, who has expressed an inability to pay all of the bill, if that customer has not been issued more than two suspension or disconnection notices during the preceding 12 months.

(C) Every deferred payment plan shall provide that the delinquent amount may be paid in equal installments over at least three billing cycles.

(D) When a residential customer has received service from its current DCTU for less than three months, the DCTU is not required to offer a deferred payment plan if the residential customer lacks:

(i) sufficient credit; or

(ii) a satisfactory history of payment for service from a previous DCTU.

(E) Every deferred payment plan offered by a DCTU:

(i) shall state, immediately preceding the space provided for the customer's signature and in boldface type no smaller than 14 point size, the following:

"THIS IS A BINDING CONTRACT" followed by **"If you are not satisfied with this contract, or if agreement was made by telephone and you feel this contract does not reflect your understanding of that agreement, contact the utility immediately and do not sign this contract. If you do not contact the utility, or if you sign this agreement, you may give up your right to dispute the amount due under the agreement except for the utility's failure or refusal to comply with the terms of this agreement."**

(I) In addition, if the customer and the DCTU representative or agent meet in person, the DCTU representative shall read the preceding statement to the customer.

(II) The DCTU shall provide information to the customer as necessary in accordance with §26.26 of this title (relating to Foreign Language Requirements) to make the preceding statement understandable to the customer;

(ii) may include a 5.0% penalty for late payment but shall not include a finance charge;

(iii) shall state the length of time covered by the plan;

(iv) shall state the total amount to be paid;

(v) shall state the specific amount of each installment;

(vi) shall allow the DCTU to disconnect service if a customer does not fulfill the terms of the deferred payment plan;

(vii) shall not refuse a customer participation in such a program on the basis of race, nationality, religion, color, sex, marital status, income level, or source of income and shall not unreasonably refuse a customer participation in such a program on the basis of geographic location;

(viii) shall be signed by the customer and a copy of the signed plan shall be provided to the customer; and

(ix) shall allow either the customer or the DCTU to renegotiate the deferred payment plan, if the customer's economic or financial circumstances change substantially during the time of the plan.

(F) A DCTU may disconnect a customer who does not meet the terms of a deferred payment plan.

(i) The DCTU may not disconnect service until a disconnection notice in accordance with §26.28 of this title has been issued to the customer indicating that the customer has not met the terms of the plan.

(ii) The DCTU may renegotiate the deferred payment plan agreement before disconnection.

(iii) No additional notice is required if the customer:

(I) did not sign the deferred payment plan;

(II) is not otherwise fulfilling the terms of the plan; and

(III) was previously provided a disconnection notice for the outstanding amount.

(8) **Residential partial payments.** Residential service payment shall first be allocated to basic local telecommunications service**.**

(b) **Nondominant certificated telecommunications utility (NCTU).**

(1) **Application**: Only paragraphs (3), (5) and (6) of this subsection apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under PURA §52.154.

(2) **Bill due date.** The bill provided to the customer shall include the payment due date, which shall not be less than 16 days after issuance.

(A) The issuance date is the postmark date on the envelope containing the bill or the issuance date on the bill if there is no postmark or envelope.

(B) Payment for service is delinquent if not received at the NCTU or at the NCTU's authorized payment agency by close of business on the due date.

(C) If the sixteenth day falls on a holiday or weekend, then the due date shall be the next work day after the sixteenth day.

(D) If the due date shown on the bill falls on a holiday or weekend, an NCTU shall include a statement on the bill or in the terms and conditions of service that informs the customer that the due date is extended to the next work day.

(3) **Penalty on delinquent bills for retail service.** An NCTU providing any service to the state, including service to an agency in any branch of government, shall not assess a fee, penalty, interest, or other charge to the state for delinquent payment of a bill.

(4) **Billing adjustments.**

(A) Overbilling. If charges are higher than the NCTU's tariff, schedule, or price list terms and conditions of service, or a customer-specific contract, an appropriate refund shall be made to the customer:

(i) The refund shall be made for the entire period of the overbilling.

(ii) If the overbilling is corrected within three billing cycles of the initial bill in error, interest is not required to be paid on the overcharge.

(iii) If the overbilling is not corrected within three billing cycles of the initial bill in error, interest shall be paid on the amount of the overcharges. The minimum interest to be paid shall be based on the rate set by the commission on or before December 1 of the preceding calendar year, compounded monthly, and accruing from the date of payment or the initial date of the bill in error.

(iv) The refund may be made by a credit on a subsequent bill, unless the customer requests otherwise.

(B) Underbilling. If charges are found to be lower than authorized by the NCTU's tariff, schedule, or price list, terms and conditions of service, or a customer-specific contract, or if the NCTU failed to bill the customer for service, then:

(i) The customer may be backbilled for the amount that was underbilled for no more than six months from the date the initial error was discovered unless underbilling is a result of theft of service by the customer.

(ii) Service may be disconnected if the customer fails to pay charges arising from an underbilling.

(iii) If the underbilling is $50 or more, the NCTU shall offer the customer a payment plan option for the same length of time as that of the underbilling. A payment plan need not be offered to a customer whose underpayment is due to theft of service.

(iv) Interest on underbilled amounts shall:

(I) not be charged unless such amounts are found to be the result of theft of service by the customer; and

(II) not exceed an amount based on the rate set by the commission on or before December 1 of the preceding calendar year, compounded monthly, and accruing from the day the customer is found to have first tampered with, bypassed, or diverted service.

(5) **Disputed bills.** If there is a dispute between a customer and an NCTU about any bill for NCTU service, the NCTU shall:

(A) investigate and report the results to the customer; and

(B) inform the customer of the complaint procedures of the commission in accordance with §26.30 of this title if the dispute is not resolved.

(6) **Notice of alternative payment programs or payment assistance.** When a customer contacts an NCTU and indicates inability to pay a bill or need of assistance with payment, the NCTU shall inform the customer of any alternative payment options and payment assistance programs available to the customer.

(7) **Residential partial payments.** Residential service payment shall first be allocated to basic local telecommunications service**.**

(c) **NCTU implementation.** NCTUs shall implement this section no later than March 1, 2001.

§26.28. Suspension or Disconnection of Service.

(a) **Dominant certificated telecommunications utility (DCTU).**

(1) **Suspension or disconnection policy.** If a DCTU chooses to suspend or disconnect a customer's basic local telecommunications service, it must follow the procedures in this subsection or modify them in ways that are more generous to the customer in terms of the cause for suspension or disconnection, the timing of the suspension or disconnection notice, and the period between notice and suspension or disconnection. Each DCTU is encouraged to develop specific policies for suspension and disconnection that treat its customers with dignity and respect for customers' or members' circumstances and payment history, and to implement those policies in ways that are consistent and non-discriminatory. Suspension or disconnection are options allowed by the commission, not requirements placed upon the DCTU by the commission.

(2) **Suspension or disconnection with notice.** After proper notice pursuant to paragraph (7) of this subsection, a DCTU may suspend or disconnect basic local telecommunications service for any of the following reasons:

(A) failure to pay tariffed charges for local telecommunications services or make deferred payment arrangements by the date of suspension or disconnection;

(B) failure of a residential customer to pay long distance charges incurred after toll blocking was imposed;

(C) failure of a non-residential customer to pay long distance charges only where the DCTU bills those charges to the customer pursuant to its tariffs or billing and collection contracts, or make deferred payment arrangements by the date of suspension or disconnection;

(D) failure to comply with the terms of a deferred payment agreement except as provided in §26.29 of this title (relating to Prepaid Local Telephone Service (PLTS));

(E) violation of the DCTU's rules on the use of service in a manner which interferes with the service of others or the operation of nonstandard equipment, if a reasonable attempt has been made to notify the customer and the customer has a reasonable opportunity to remedy the situation;

(F) failure to pay a deposit pursuant to §26.24 of this title (relating to Credit Requirements and Deposits); or

(G) failure of the guarantor to pay the amount guaranteed, when the DCTU has a written agreement, signed by the guarantor, that allows for disconnection of the guarantor's service for nonpayment.

(3) **Suspension or disconnection without notice.** Basic local telecommunications service may be suspended or disconnected without notice, except as provided in §26.29 of this title, for any of the following reasons:

(A) where service is connected without authority;

(B) where service was reconnected without authority; or

(C) where there are instances of tampering with the DCTU's equipment, evidence of theft of service, or other acts to defraud the DCTU.

(4) **Suspension or disconnection prohibited.** Basic local telecommunications service may not be suspended or disconnected for any of these reasons:

(A) failure to pay for any charges that are not provided for in a DCTU's tariffs;

(B) failure to pay for a different type or class of utility service unless charges were included on the bill at the time service was initiated;

(C) failure to pay charges resulting from underbilling that is more than six months before the current billing, except for theft of service;

(D) failure to pay disputed charges until a determination is made on the accuracy of the charges; or

(E) failure of a residential customer to pay for any charges other than for tariffed residential local telecommunications services, except for the nonpayment of long distance charges incurred after toll blocking was imposed.

(5) **Suspension or disconnection on holidays or weekends.** A DCTU shall not suspend or disconnect service on holidays or weekends, or the day before a holiday or weekend, unless DCTU personnel are available on those days to take payments and reconnect service. A DCTU may suspend or disconnect service on holidays or weekends, or the day before a holiday or weekend, when:

(A) a dangerous condition exists;

(B) notice is not required pursuant to paragraph (3) of this subsection; or

(C) the customer requests disconnection.

(6) **Suspension or disconnection for ill and disabled.** No DCTU may suspend or disconnect service at the permanent residence of a delinquent customer if that customer establishes that such action will prevent the customer from summoning emergency medical help for someone who is seriously ill residing at that residence.

(A) Each time a customer seeks to avoid suspension or disconnection of service under this subsection, the customer before the date of suspension or disconnection shall:

(i) have the person's attending physician (for purposes of this subsection, the term "physician" shall mean any public health official, including, but not limited to, medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar public health official) contact the DCTU by the stated date of disconnection;

(ii) have the person's attending physician submit a written statement to the DCTU; and

(iii) enter into a deferred payment plan.

(B) The prohibition against suspension or disconnection provided by this subsection shall last 63 days from the issuance of the DCTU bill or a shorter period agreed upon by the DCTU and the customer or physician.

(7) **Suspension and disconnection notices.** Any suspension or disconnection notice issued by a DCTU to a customer shall:

(A) not be issued to the customer before the first day after the bill is due. Payment of the delinquent bill at a DCTU's authorized payment agency is considered payment to the DCTU;

(B) be a separate mailing or hand delivery or sent electronically if requested by the customer, with a stated date of suspension or disconnection and with the words "suspension notice," or "disconnection notice," or similar language prominently displayed on the notice;

(C) have a suspension or disconnection date that is not less than ten days after the notice is issued;

(D) be in English and Spanish;

(E) for residential customers, indicate the specific amount owed for tariffed local telecommunications services required to maintain basic local telecommunications service; and

(F) include a statement notifying customers that if they need assistance paying their bill, or are ill and unable to pay their bill, they may be able to make some alternative payment arrangement or establish a deferred payment plan. The notice shall advise customers to contact the DCTU for more information.

(8) **Residential customer payment allocations.** Payment allocations related to basic local telecommunications service suspension or disconnection are as follows:

(A) Payments shall first be allocated to basic local telecommunications service.

(B) If services are bundled, the rate of basic local telecommunications service shall be the DCTU's charge for stand-alone basic local telecommunications service.

(9) **Toll blocking.**

(A) The DCTU may toll block a residential customer for the nonpayment of long distance charges.

(B) Access to toll-free numbers. Where technically capable, toll blocking shall allow access to toll-free numbers.

(C) Nondiscriminatory application. The DCTU shall not apply toll blocking in an unreasonably preferential, prejudicial, or discriminatory manner.

(D) Notice requirement. The DCTU shall notify the customer within 24 hours of initiating toll blocking.

(10) **Release of telephone line.**

(A) Upon a request to switch a current customer to another local service provider, the DCTU shall release the customer's telephone line and number to the preferred provider in a manner to expedite the switch without disruption in service.

(B) Upon a request to switch a suspended customer to another local service provider, the DCTU shall release the customer's telephone line and number within five days after the request is received. Upon a request to switch a disconnected customer to another local service provider, the DCTU shall release the customer's telephone line within five days after the request is received.

(C) A DCTU shall not refuse to release a customer's telephone line and number due to the non-payment of a bill.

(b) **Nondominant certificated telecommunications utility (NCTU).**

(1) **Application**. Only paragraphs (2)-(4), (7)(A)-(D) and (10) of this subsection apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under PURA §52.154.

(2) **Suspension or disconnection policy.** If an NCTU chooses to suspend or disconnect a customer's basic local telecommunications service, it must follow the procedures in this subsection or modify them in ways that are more generous to the customer in terms of the cause for suspension or disconnection, the timing of the suspension or disconnection notice, and the period between notice and suspension or disconnection. Each NCTU is encouraged to develop specific policies for suspension and disconnection that treat its customers with dignity and respect for customers' or members' circumstances and payment history, and to implement those policies in ways that are consistent and non-discriminatory. Suspension or disconnection are options allowed by the commission, not requirements placed upon the NCTU by the commission.

(3) **Suspension or disconnection with notice.** After proper notice pursuant to paragraph (7) of this subsection, an NCTU may suspend or disconnect basic local telecommunications service for any legal reason that is clearly disclosed in the customer's terms and conditions of service.

(4) **Suspension or disconnection without notice.** Basic local telecommunications service may be suspended or disconnected without notice for any of the following reasons:

(A) where service is connected without authority;

(B) where service was reconnected without authority; or

(C) where there are instances of tampering with the NCTU's equipment, evidence of theft of service, or other acts to defraud the NCTU.

(5) **Suspension or disconnection prohibited.** Basic local telecommunications service may not be suspended or disconnected for any of the following reasons:

(A) failure to pay for any charges that are not provided for in an NCTU's tariff, schedule, list, terms and conditions of service, or customer-specific contract;

(B) failure to pay for a different type or class of utility service unless charges were included on the bill at the time service was initiated;

(C) failure to pay charges resulting from underbilling that is more than six months before the current billing, except for theft of service;

(D) failure to pay disputed charges until a determination is made on the accuracy of the charges; or

(E) failure of a residential customer to pay for any charges other than for residential local telecommunications services, except for the nonpayment of long distance charges incurred after toll blocking was imposed.

(6) **Suspension or disconnection on holidays or weekends.** An NCTU shall not suspend or disconnect on holidays or weekends, or the day before a holiday or weekend, unless NCTU personnel are available on those days to take payments and reconnect service. An NCTU may suspend or disconnect service on holidays or weekends, or the day before a holiday or weekend, when:

(A) a dangerous condition exists;

(B) notice is not required pursuant to paragraph (4) of this subsection; or

(C) the customer requests disconnection.

(7) **Suspension and disconnection notices.** Any suspension or disconnection notice issued by an NCTU to a customer must:

(A) not be issued to the customer before the first day after the bill is due. Payment of the delinquent bill at an NCTU's authorized payment agency is considered payment to the NCTU;

(B) be a separate mailing or hand delivery or sent electronically if requested by the customer, with a stated date of suspension or disconnection and with the words "suspension notice," or "disconnection notice," or similar language prominently displayed on the notice;

(C) have a suspension or disconnection date that is not less than ten days after the notice is issued;

(D) be in English and Spanish; and

(E) for residential customers, indicate the specific amount owed for local telecommunications services required to maintain basic local telecommunications service.

(8) **Residential customer payment allocations.** Payment allocations related to basic local telecommunications service suspension or disconnection are as follows:

(A) Payments shall first be allocated to basic local telecommunications service.

(B) If services are bundled, the rate of basic local telecommunications service shall be the NCTU's charge for stand-alone basic local telecommunications service.

(9) **Toll blocking.**

(A) The NCTU may toll block a residential customer for the nonpayment of long distance charges.

(B) Access to toll-free numbers. Where technically capable, toll blocking shall allow access to toll-free numbers.

(C) Nondiscriminatory application. The NCTU shall not apply toll blocking in an unreasonably preferential, prejudicial, or discriminatory manner.

(D) Notice requirement. The NCTU shall notify the customer within 24 hours of initiating toll blocking.

(10) **Release of telephone line.**

(A) Upon a request to switch a current customer to another local service provider, the NCTU shall release, or cause to release, the customer's telephone line and number to the preferred provider in a manner to expedite the switch without disruption in service.

(B) Upon a request to switch a suspended customer to another local service provider, the NCTU shall release, or cause to release, the customer's telephone line and number within five days after the request is received. Upon a request to switch a disconnected customer to another local service provider, the NCTU shall release, or cause to release, the customer's telephone line within five days after the request is received.

(C) An NCTU shall not refuse to release a customer's or former customer's telephone line and number due to the non-payment of a bill.

(c) **NCTU implementation.** NCTUs shall implement this section no later than March 1, 2001.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter B. CUSTOMER SERVICE AND PROTECTION.

§26.29. Prepaid Local Telephone Service (PLTS).

(a) **Applicability.** The provisions of this section shall apply to all dominant certificated telecommunications utilities (DCTUs) unless specifically indicated otherwise. A DCTU shall provide prepaid local telephone service (PLTS) as required by this section and shall not refuse to provide PLTS to an applicant for such service because the applicant is indebted to any DCTU or other telecommunications carrier for telecommunication services, including the carriage charges of interexchange carriers where the DCTU bills those charges under tariffs or contracts.

(b) **Eligible customers.**

(1) **Former customers.** In cases where a DCTU would refuse to provide service to an applicant for residential telephone service because of indebtedness to any DCTU or other telecommunications carrier, the applicant is eligible to receive PLTS as required by this section.

(2) **Current customers.** A current residential customer who has not been disconnected but who has received a notice following suspension of service for non-payment for services is eligible to receive PLTS as required by this section.

(3) **Applicant previously disconnected from PLTS by a DCTU.** Any applicant who was previously disconnected from PLTS by a DCTU, pursuant to subsection (e)(6) of this section, does not have the right to receive PLTS from that DCTU again.

(4) Business customers shall not be eligible for PLTS.

(c) **Requirements for notifying customers about PLTS.** A DCTU shall provide notice to its customers about PLTS as required by this subsection.

(1) **Timing of notice.**

(A) If the DCTU's standard practice is to suspend a customer's service for non-payment of charges before disconnecting service, it shall notify the customer of the availability of PLTS in the suspension notice.

(B) If the DCTU's standard practice is to disconnect a customer's service without suspension, the DCTU shall notify such customer of the availability of PLTS within three days after disconnection.

(2) **Content of notice.** The notice provided by a DCTU offering PLTS shall be reviewed in the DCTU's compliance filing and shall notify customers of the rates, terms, and conditions of PLTS, as described in subsection (e) of this section, including:

(A) a customer's eligibility to enter into the PLTS plan;

(B) a description of the PLTS plan including its features, charges, and options;

(C) a customer's responsibility to make an initial payment for PLTS and any applicable service connection charges, as defined in subsection (e)(2)(A) of this section;

(D) a customer's responsibility to make the initial deferred payment, if applicable, in the third billing cycle and every month thereafter, for up to 12 months;

(E) a customer's responsibility not to incur additional charges for calls, including long distance or other usage-sensitive services that will be charged on the local telephone bill, nor to subscribe to any services other than those included in PLTS, as defined in §26.5 of this title (relating to Definitions);

(F) a customer's violation of the terms and conditions of the PLTS plan may result in disconnection;

(G) if a customer is disconnected for violation of the terms and conditions of the PLTS plan, a DCTU has the right to retain and apply any credit in the PLTS account to the customer's outstanding balances for telecommunications services;

(H) If a customer is disconnected for violation of the terms and conditions of the PLTS plan, that customer does not have the right to receive PLTS from that DCTU again;

(I) the customer's responsibility to subscribe to PLTS within a certain time period in order to defer service restoration or connection charges as described in subsection (e)(1)(B) of this section; and

(J) the customer's right to receive basic local telephone service without entering PLTS if the customer does not owe for basic local telephone charges. (This right shall be prominently displayed on the notice and shall be communicated to a customer anytime the utility notifies a customer of the rates and conditions of PLTS).

(d) **Subscription to PLTS.**

(1) **Customer request to subscribe to PLTS.** To subscribe to PLTS, an eligible customer must contact the DCTU during regular business hours to request PLTS.

(2) **Confirmation letter.** Within 24 hours after a customer requests PLTS, the DCTU shall mail the customer a confirmation letter in English or Spanish as necessary, explaining the PLTS plan, including the customer's rights and responsibilities upon enrollment and information about the rates, terms, and conditions of service under the PLTS plan.

(e) **Rates, terms, and conditions of PLTS.** A DCTU shall offer PLTS under the following terms and conditions:

(1) **Rates for PLTS.**

(A) The monthly rate for PLTS shall include only:

(i) the applicable residential tariffed rate (or lifeline rates, if applicable) for services included in the PLTS definition in §26.5 of this title;

(ii) tariffed charges for non-listed and non-published service, if requested by the customer; and

(iii) surcharges and fees authorized by a governmental entity that are billed by the DCTU, including 911, subscriber line charges, sales tax, and municipal fees.

(B) Non-recurring rates.

(i) If a DCTU does not suspend basic local service before disconnection, the DCTU must defer service connection charges until the customer returns to basic local telecommunications service. However, if a customer does not subscribe to PLTS within ten days from the date the DCTU mailed a termination notice containing notice of PLTS eligibility, the DCTU may charge service connection charges when subscribing to PLTS.

(ii) If a DCTU suspends basic local service prior to disconnection, the DCTU must defer service restoration charges until the subscribing customer returns to basic local telecommunications service.

(C) Late charges. The DCTU shall not assess late charges on a PLTS customer.

(2) **Payments under PLTS.**

(A) A DCTU may require the residential PLTS customer to make an initial payment for service, which shall not exceed:

(i) the rates as described in paragraph (1)(A) of this subsection for up to two months of service; and

(ii) applicable non-recurring service connection charges.

(B) A DCTU shall not require subsequent monthly payments that exceed the rates for one month of PLTS. The due date of monthly payments shall be based on the DCTU's regular monthly billing cycle.

(C) A customer may be required to make payments under the deferred payment plan according to paragraph (4) of this subsection.

(3) **Toll blocking.** PLTS subscribers shall have mandatory toll blocking and usage sensitive blocking placed on the telephone lines.

(A) Customer responsibility. A customer subscribing to PLTS shall not place or receive calls, including long distance or other usage-sensitive services, for which additional charges are billed to the customer's telephone number, nor subscribe to any services other than those included in PLTS.

(B) DCTU responsibility. The DCTU shall notify the customers of their responsibilities under PLTS when the customer inquires about the service in the confirmation letter.

(4) **Deferred payment plan under PLTS.** As a condition of subscribing to PLTS, the DCTU may require an applicant to enter into a deferred payment plan for any outstanding debt owed to the DCTU for basic local telephone service. The DCTU shall not require an applicant to enter into a deferred payment plan to pay any outstanding debt for any services that the customer cannot use under PLTS including long distance services. If the DCTU is unable to determine the amount of outstanding debt, the DCTU shall not require an applicant to enter into a deferred payment plan.

(A) Determination of deferred payment plan amount. To determine the deferred payment plan amount, the DCTU shall:

(i) determine the amount the customer owes for basic local telephone service;

(ii) apply any undesignated partial payment made by the customer before subscribing to PLTS to past debt for local telecommunications service; and

(iii) not reallocate any undesignated partial payments assigned under clause (ii) of this subparagraph to amounts not yet incurred for basic local telecommunications service.

(B) Monthly payments under the deferred payment plan.

(i) A deferred payment plan for past due charges shall not require the applicant to make monthly payments which exceed $10 per month or one-twelfth of the outstanding debt as determined in subparagraph (A) of this paragraph, whichever is greater.

(ii) If the DCTU and PLTS customer enter into a deferred payment, the initial deferred payment shall be billed beginning with the third billing cycle after initiation of service and on a monthly basis thereafter.

(5) **Customer deposit.** No deposit shall be required from any residential applicant for PLTS.

(6) **Disconnection of PLTS.**

(A) Disconnection with notice. A DCTU may disconnect PLTS after notice for any of the following reasons:

(i) failure to comply with the terms of a deferred payment plan for PLTS;

(ii) upon conclusion of all periods for which an advance payment has been applied to the PLTS account and when the customer's PLTS account has a zero balance; or

(iii) violation of the DCTU's rules on using PLTS in a manner which interferes with the service of others or the operation of nonstandard equipment, if a reasonable attempt has been made to notify the customer and the customer has a reasonable opportunity to remedy the situation.

(B) Disconnection without notice. A DCTU may immediately disconnect PLTS without notice:

(i) if the customer accrues new charges for toll or other services on the telephone bill as described in paragraph (3) of this subsection;

(ii) where a known dangerous condition exists for as long as the condition exists; or

(iii) where service is connected without authority by a person who has not applied for the service or who has reconnected service without authority after termination.

(C) Notice after disconnection. If a PLTS customer is disconnected under subparagraph (A) or (B) of this paragraph, a DCTU shall send a final notice stating that the customer is permanently disconnected from PLTS and that the customer shall not be eligible for

PLTS from that DCTU. That notice shall also state the terms and conditions that the customer must satisfy before the customer can return to basic local telecommunications service.

(f) **Return to basic local telecommunications service.**

(1) A customer subscribing to PLTS may return to basic local telecommunications service if the customer has paid:

(A) all outstanding debt to the DCTU, including the carriage charges of interexchange carriers where the DCTU bills those charges pursuant to tariffs or contracts; and

(B) bills for PLTS.

(2) When a customer completes the obligations identified in paragraph (1) of this subsection, a DCTU shall notify the customer of the:

(A) eligibility requirements for returning to basic local telecommunications services;

(B) option of receiving basic local telecommunications service with toll blocking and/or usage sensitive blocking; and

(C) requirement to contact the DCTU if the customer wants to return to basic local telecommunications service.

(3) If the customer is eligible to return to basic local telecommunications service, the customer shall:

(A) request basic local telecommunications service from the DCTU; and

(B) pay the service restoration fee, if applicable.

(g) **Customer education.**

(1) The commission shall provide information about the PLTS plan to customers.

(2) A DCTU subject to the requirements of this section shall provide information about the PLTS plan annually in customers' bills. This information shall be subject to review during the DCTU's compliance filing.

(3) A DCTU or its affiliate publishing a white pages directory on behalf of the DCTU shall disclose in clear language the availability, terms, and conditions of the PLTS plan in the section of the directory stating the rights of a customer.

(h) **Toll and usage sensitive blocking capability.**

(1) The DCTU shall provide toll blocking and usage sensitive blocking to its maximum technical capability.

(A) If the DCTU's tariffs reflect its maximum technical capability, it shall provide toll blocking and usage sensitive blocking as stated in those tariffs.

(B) If the DCTU's tariffs do not reflect its maximum technical blocking capability, it shall inform the commission of the maximum level of blocking it is required to provide under PLTS in its compliance filings.

(C) If the DCTU does not have a tariff for toll or usage sensitive blocking but has such technical capability, it shall inform the commission of the maximum level of blocking it is required to provide under PLTS in its compliance filings.

(D) As the DCTU's blocking capability increases, it shall notify the commission and provide such enhanced blocking under PLTS.

(2) Where technically capable, toll blocking shall not deny access to toll-free numbers.

(3) When imposing a toll or usage sensitive services block, the DCTU shall do so in a manner that is not unreasonably preferential, prejudicial, or discriminatory.

(i) **Waiver request.**

(1) A DCTU may request exemption from the requirements of this section, on a wire-center by wire-center basis, if it cannot meet the toll blocking and/or usage sensitive requirements.

(2) A DCTU requesting a waiver shall fully document in its compliance filings the technical reasons for its inability to toll and/or usage sensitive block and indicate when such technical capability will be available in the wire center.

(3) A waiver shall expire when the DCTU acquires the capability to block toll and/or usage sensitive services or when the DCTU is required to acquire the capability to toll and/or usage sensitive block by federal or state law or regulations, whichever comes first. The DCTU shall notify the commission in writing within 30 days of acquiring or being required to acquire the capability.

(j) **Interexchange carrier (IXC) notification.** A DCTU serving 31,000 or more access lines and that is not a cooperative corporation shall:

(1) Within 24 hours after a customer subscribes to PLTS, include a notice in the Customer Access Record Exchange (CARE) or similar report if developed by the DCTU, and the Line Identification Database (LIDB) indicating that the customer is subscribed to PLTS and any number changes;

(2) Make access to the information contained in LIDB available to all IXCs serving the customer's area; and

(3) If CARE, or similar report if developed by the DCTU, and LIDB are not available, the DCTU shall specify in its tariffs a comparable method of providing such notice to IXCs serving the area indicating a customer's subscription to PLTS; and

(4) This subsection should not be interpreted as expanding access to CARE, or similar report if developed by the DCTU, to IXCs other than the customers' presubscribed carriers.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter B. CUSTOMER SERVICE AND PROTECTION.

§26.30. Complaints.

(a) **Complaints to a certificated telecommunications utility (CTU).** A customer or applicant for service (complainant) may submit a complaint to a CTU either in person, by letter, telephone, or any other means determined by the CTU.

(1) **Initial investigation.** The CTU shall investigate and advise the complainant of the results of the investigation within 21 days of receipt of the complaint. A CTU shall inform customers of the right to receive these results in writing.

(2) **Supervisory review by the CTU.** If a complainant is not satisfied with the initial response to the complaint, the complainant may request a supervisory review by the CTU.

(A) A CTU supervisor shall conduct the review and shall inform the complainant of the results of the review within ten days of receipt of the complainant's request for a review. A CTU shall inform customers of the right to receive these results in writing.

(B) A complainant who is dissatisfied with a CTU's supervisory review shall be informed of:

(i) the right to file a complaint with the commission;

(ii) the commission's informal complaint resolution process;

(iii) the following contact information for the commission:

(I) Mailing Address: Public Utility Commission of Texas, Customer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326;

(II) Phone Number: (512) 936-7120 or in Texas (toll-free) 1-888-782-8477;

(III) FAX: (512) 936-7003;

(IV) E-mail address: customer@puc.texas.gov;

(V) Internet address: http.//www.puc.texas.gov;

(VI) Telecommunications Device for the Deaf (TTY): (512) 936-7136; and

(VII) Relay Texas (toll-free): 1-800-735-2989.

(b) **Complaints to the commission.** Notwithstanding anything to the contrary, the commission may only hear a complaint of a retail or wholesale customer against a deregulated company or exempt carrier that is within the scope of the commission's authority provided in Public Utility Regulatory Act (PURA) §65.102.

(1) **Informal complaints.**

(A) The complaint to the commission should include:

(i) The complainant's name, address, and telephone number.

(ii) The name of the CTU or subsidiary company against which the complaint is being made.

(iii) The customer's account or phone number.

(iv) An explanation of the facts relevant to the complaint.

(v) Any other information or documentation which supports the complaint.

(B) Upon receipt of a complaint from the commission, a CTU shall investigate and advise the commission in writing of the results of its investigation within 21 days of the date forwarded by the commission.

(C) The commission shall:

(i) review the CTU's investigative results;

(ii) determine a resolution for the complaint; and

(iii) notify the complainant and the CTU in writing of the resolution.

(D) While any informal complaint process is ongoing at the commission:

(i) basic local telecommunications service may not be suspended or disconnected for the nonpayment of disputed charges; and

(ii) a customer is obligated to pay any undisputed portion of the bill.

(E) The CTU shall keep a record of any informal complaint forwarded to it by the commission for two years after the determination of that complaint.

(i) This record shall show the name and address of the complainant, and the date, nature, and adjustment or disposition of the complaint.

(ii) Protests regarding commission-approved rates or charges that require no further action by the CTU need not be recorded.

(2) **Formal complaints.** If the complainant is not satisfied with the results of the informal complaint process, the complainant may file a formal complaint with the commission. This process may include the formal docketing of the complaint as provided in the commission's Procedural Rules, §22.242 of this title (relating to Complaints).

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter B. CUSTOMER SERVICE AND PROTECTION.

§26.31. Disclosures to Applicants and Customers.

(a) **Application.** Subsection (b)(4)(C)(viii) of this section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Regulatory Act (PURA) §52.154.

(b) **Certificated telecommunications utilities (CTU).** These disclosure requirements shall apply only to residential customers and business customers with five or fewer customer access lines.

(1) **Promotional requirements.** Promotions, including, but not limited to advertising and marketing, conducted by any CTU shall comply with the following:

(A) If any portion of a promotion is translated into another language, then all portions of the promotion shall be translated into that language. Promotions containing a single informational line or sentence in another language to advise persons how to obtain the same promotional information in a different language are exempt from this requirement.

(B) Promotions shall not be fraudulent, unfair, misleading, deceptive, or anti-competitive as prohibited by federal and state law.

(2) **Prior to acceptance of service.** Each CTU shall provide the following information to applicants before any acceptance of service:

(A) notice that the customer will receive the information packet described in paragraphs (3) and (4) of this subsection;

(B) an explanation of each product or service being offered;

(C) a description of how each charge will appear on the telephone bill;

(D) any applicable minimum contract service terms;

(E) disclosure of any and all money that must be paid prior to installation of new service or transfer of existing service to a new location and whether or not the money is refundable;

(F) disclosure of construction charges in accordance with §26.22 of this title (relating to Request for Service);

(G) information about any necessary change in the applicant's telephone number;

(H) disclosure of the company's cancellation policy; and

(I) information on whom to call and a working toll-free number for customer inquiries.

(3) **Terms and conditions of service.** A CTU shall provide information regarding terms and conditions of service to customers in writing and free of charge at the initiation of service. Upon request, customers are entitled to receive an additional copy of the terms and conditions of service once annually free of charge. Any contract offered by a CTU must include the terms and conditions of service statement. A CTU may not offer a customer a contract or terms and conditions of service statement which waives the customer's rights under law or commission rule.

(A) The information shall be:

(i) sent to new customers before payment for a full bill is due;

(ii) clearly labeled to indicate it contains the terms and conditions of service;

(iii) provided in a readable format written in plain, non-technical language; and

(iv) provided in the same languages in which the CTU markets service to a customer.

(B) The following information shall be included:

(i) all rates and charges as they will appear on the telephone bill;

(ii) an itemization of any charges which may be imposed on the customer, including but not limited to, charges for late payments and returned checks;

(iii) a full description of each product or service to which the customer has subscribed;

(iv) any applicable minimum contract service terms and any fees for early termination;

(v) any and all money that must be paid prior to installation of new service or transfer of existing service to a new location and whether or not the money is refundable;

(vi) applicable construction charges in accordance with §26.22 of this title;

(vii) any necessary change in the applicant's telephone number;

(viii) the company's cancellation policy;

(ix) a working toll-free number for customer inquiries; and

(x) the provider's legal or "doing business as" name used for providing telecommunications services in the state.

(4) **Customer rights.** A CTU shall provide information regarding customer rights to customers in writing and free of charge at the initiation of service.

(A) The information in subparagraph (C) of this paragraph shall be:

(i) sent to new customers before payment for a full bill is due;

(ii) clearly labeled to indicate it contains the customer rights;

(iii) provided in a readable format written in plain, non-technical language; and

(iv) provided in the same languages in which the CTU markets service to a customer.

(B) The CTU shall also provide:

(i) the information in subparagraph (C) of this paragraph to customers at least every other year at no charge; or

(ii) a printed statement on the bill or a billing insert identifying the location of the information in subparagraph (C) of this paragraph. The statement shall be provided to customers every six months.

(C) The following information shall be included:

(i) the CTU's credit requirements and the circumstances under which a deposit or an additional deposit may be required, how a deposit is calculated, the interest paid on deposits, and the time frame and requirement for return of the deposit to the customer and any other terms and conditions related to deposits;

(ii) the time allowed to pay outstanding bills and the amount and conditions under which penalties may be applied to delinquent bills;

(iii) grounds for suspension and/or disconnection of service;

(iv) the steps that must be taken before a CTU may suspend and/or disconnect service;

(v) the steps for resolving billing disputes with the CTU and how disputes affect suspension and/or disconnection of service;

(vi) information on alternative payment plans offered by the CTU, including, but not limited to, payment arrangements and deferred payment plans, as well as a statement that a customer has the right to request these alternative payment plans;

(vii) the steps necessary to have service restored and/or reconnected after involuntary suspension or disconnection;

(viii) a customer's right to continue local service as long as full payment for local service is timely made;

(ix) information regarding protections against unauthorized billing charges ("cramming") and selection of telecommunications utilities ("slamming") as required by §26.32 of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming")) and §26.130 of this title (relating to Selection of Telecommunications Utilities), respectively;

(x) the customer's right to file a complaint with the CTU, the procedures for a supervisory review, and right to file a complaint with the commission regarding any matter concerning the CTU's service. The commission's contact

information: Public Utility Commission of Texas, Customer Protection Division, 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.texas.gov, Internet address: www.puc.texas.gov, TTY (512) 936-7136, and Relay Texas (toll-free) 1-800-735-2989, shall accompany this information;

(xi) the hours, addresses, and telephone numbers of CTU offices where bills may be paid and information may be obtained, or a toll-free number at which the customer may obtain this information;

(xii) a toll-free telephone number or the equivalent (such as use of WATS or acceptance of collect calls) that customers may call to report service problems or make billing inquiries;

(xiii) a statement that CTU services are provided without discrimination as to a customer's race, color, sex, nationality, religion, marital status, income level, source of income, or from unreasonable discrimination on the basis of geographic location;

(xiv) a summary of the company's policy regarding the provision of credit history based upon the credit history of a customer's former spouse;

(xv) notice of any special services such as readers or notices in Braille, if available, and the telephone number of the text telephone for the deaf or hard of hearing at the commission;

(xvi) how customers with physical disabilities, and those who care for them, can identify themselves to the CTU so that special action can be taken to appropriately inform these persons of their rights; and

(xvii) if a CTU is offering Lifeline, how information about customers who qualify for Lifeline may be shared between state agencies and their local phone service provider.

(5) **Notice of changes.** A CTU shall provide customers written notice between 30 and 60 calendar days in advance of a material change in the terms and conditions of service or customer rights and shall give the customer the option to decline any material change in the terms and conditions of service and cancel service without penalty due to the material change in the terms and conditions of service. This paragraph does not apply to changes that are beneficial to the customer such as a price decrease or mandated regulatory changes.

(6) **Right of cancellation.**

(A) A CTU shall provide all of its residential applicants and customers the right of rescission in accordance with applicable law.

(B) If a residential applicant or customer will incur an obligation exceeding 31 days, a CTU shall promptly provide the applicant or customer with the terms and conditions of service after the applicant or customer has provided authorization to CTU. The CTU shall offer the applicant or customer a right to cancel the contract without penalty or fee of any kind for a period of six business days after the terms and conditions of service are mailed or sent electronically to the applicant or customer.

(c) **Dominant certificated telecommunications utility (DCTU).** In addition to the requirements of subsection (b) of this section, the following requirements shall apply to residential customers and business customers with five or fewer customer access lines.

(1) **Prior to acceptance of service.** Before signing applicants or accepting any money for new residential service or transferring existing residential service to a new location, each DCTU shall provide to applicants information:

(A) about the DCTU's lowest-priced alternatives, beginning with the least cost option, and the range of service offerings available at the applicant's location with full consideration to applicable equipment options and installation charges; and

(B) that clearly informs applicants about the availability of Lifeline service.

(2) **Customer rights.**

(A) If a DCTU provides its customers with the same information as required by subsection (b)(4)(C) of this section in the telephone directories provided to each customer pursuant to §26.128 of this title (relating to Telephone Directories), the DCTU shall provide a printed statement on the bill or a billing insert identifying the location of the information. The statement or billing insert shall be provided to customers every six months.

(B) The information required by subsection (b)(4)(C) of this section and this subsection shall be provided in English and Spanish; however, a DCTU is exempt from the Spanish language requirement if 10% or fewer of its customers are exclusively Spanish-speaking. If the DCTU is exempt from the Spanish language requirement, it shall notify all customers through a statement in both English and Spanish, in the customer rights, that the information is available in Spanish from the DCTU, both by mail and at the DCTU's offices.

(C)The information required in subsection (b)(4)(C) of this section shall also include:

(i) the customer's right to information about rates and services;

(ii) the customer's right to inspect or obtain at reproduction cost a copy of the applicable tariffs and service rules;

(iii) information on prohibitions for disconnection of local service for the ill and disabled;

(iv) information on the availability of prepaid local telephone service as required by §26.29 of this title (relating to Prepaid Local Telephone Service (PLTS)); and

(v) information regarding privacy issues as required by §26.121 of this title (relating to Privacy Issues).

(d) **Nondominant certificated telecommunications utility (NCTU) implementation.** NCTUs shall implement this section no later than March 1, 2001.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter B. CUSTOMER SERVICE AND PROTECTION.

§26.32. Protection Against Unauthorized Billing Charges ("Cramming").

(a) **Purpose.** The provisions of this section are intended to ensure that all customers in this state are protected from unauthorized charges on a customer's telecommunications utility bill. This section establishes the requirements necessary to obtain and verify customer consent for charges for any product or service before the associated charges appear on the customer's telephone bill.

(b) **Application.** This section applies to all "billing agents," "billing telecommunications utilities," and "service providers" as those terms are defined in §26.5 of this title (relating to Definitions) or the Public Utility Regulatory Act (PURA). This section does not apply to:

(1) an unauthorized change in a customer's local or long distance service provider, which is addressed in §26.130 of this title (relating to Selection of Telecommunications Utilities);

(2) message telecommunications charges that are initiated by dialing 1+, 0+, 0-, 1010XXX, or collect calls and charges for video services, if the service provider has the necessary call record detail to establish the billing for the call or service; and

(3) a provider of commercial mobile radio service as defined in PURA §51.003(5).

(c) **Definition.** The term "customer," when used in this section, shall mean the account holder, including the account holder's spouse, in whose name telephone service is billed, including individuals, governmental units at all levels of government, corporate entities, and any other entity or person with legal capacity to request to be billed for telephone service.

(d) **Requirements for billing authorized charges.** No service provider or billing agent shall submit charges for any product or service for billing on a customer's telephone bill before complying with all of the following requirements:

(1) Inform the customer. The service provider offering the product or service shall thoroughly inform the customer of the product or service being offered, including all associated charges for the product or service, and shall inform the customer that the associated charges for the product or service will appear on the customer's telephone bill.

(2) Obtain customer consent. The service provider shall obtain clear and explicit consent, verified pursuant to subsection (f) of this section, from the customer to obtain the product or service being offered and to have the associated charges appear on the customer's telephone bill. A record of the customer's verified consent shall be maintained by the service provider offering the product or service for at least 24 months immediately after the verified consent was obtained.

(3) Provide contact information. The service provider offering the product or service, and any billing agent for the service, shall provide the customer with a toll-free telephone number that the customer may call, and an address to which the customer may write, to resolve any billing dispute and to obtain answers to any questions.

(4) Provide business information. The service provider (other than the billing telecommunications utility) and its billing agent shall provide the billing telecommunications utility with its name, business address, and business telephone number.

(5) Obtain billing telecommunications utility authorization. The service provider and its billing agent shall execute a written agreement with the billing telecommunications utility to bill for products or services on the billing telecommunications utility's telephone bill. Record of this agreement shall be maintained by:

(A) the service provider;

(B) any billing agent for the service provider; and

(C) the billing telecommunications utility for as long as the billing for the product or service continues and for the 24 months immediately following the permanent discontinuation of the billing.

(e) **Post-termination billing.** A service provider shall not bill a customer for a product or service after the termination or cancellation date for that product or service unless the bill is for a product or service provided prior to the termination or cancellation date; or the service provider subsequently obtains customer consent and verification of that consent pursuant to this section.

(f) **Verification requirements.**

(1) Verification of a customer's consent for an order of a product or service must include:

(A) the date of customer consent;

(B) the date of customer verification of consent;

(C) the name and telephone number of the customer; and

(D) the exact name of the service provider as it will appear on the customer's bill.

(2) Verification of a customer's consent for an order of a product or service may not include discussion of any incentives that were or may have been offered by the service provider and shall be limited, without explanation, to the identification of:

(A) each offered product or service;

(B) applicable charges;

(C) how a product or service can be cancelled, including any charges associated with terminating the product or service; and

(D) how the charge will appear on the customer's telephone bill.

(3) During any communication with a customer to verify that customer's consent for a product or service, the independent third-party verifier or the sales representative, shall, after sufficient inquiry to ensure that the customer is authorized to order the product or service, obtain the explicit customer acknowledgment that charges for the product or service ordered by the customer will be assessed on the customer's telephone bill.

(4) Except in customer-initiated transactions with a certificated telecommunications utility for which the service provider has the appropriate documentation obtained pursuant to section (d), verification of customer consent to an order for a product or service shall be verified by one or more of the following methods:

(A) Written or electronically signed documentation.

(i) Written or electronically signed verification of consent shall be a separate document containing only the information required by paragraphs (1) and (2) of this subsection for the sole purpose of verifying the consent for a product or service on the customer's telephone bill. A customer shall be provided the option of using another form of verification in lieu of an electronically signed verification.

(ii) The document shall be signed and dated by the customer. Any electronically signed verification shall include the customer disclosures required by the *Electronic Signatures in Global and National Commerce Act* §101(c).

(iii) The document shall not be combined with inducements of any kind on the same document, screen or webpage.

(iv) If any portion of the document, screen or webpage is translated into another language, then all portions of the document shall be translated into that language. Every document shall be translated into the same language as any promotional materials, oral descriptions, or instructions provided with the document, screen or webpage.

(B) Toll-free electronic verification placed from the telephone number that is the subject of the product or service, except in exchanges where automatic number identification (ANI) from the local switching system is not technically possible. The service provider must:

(i) ensure that the electronic verification confirms the information required by paragraphs (1) and (2) of this subsection for the sole purpose of verifying the customer's consent for a product or service on the customer's telephone bill; and

(ii) establish one or more toll-free telephone numbers exclusively for the purpose of verifying the customer consent of charges for the product(s) or service(s) so that the customer calling the toll-free number(s) will reach a voice response unit or similar mechanism regarding the customer consent for the product(s) or service(s) and automatically records the ANI from the local switching system.

(iii) Automated systems shall provide customers the option of speaking with a live person at any time during the call.

(C) Voice recording by service provider.

(i) The recorded conversation with a customer shall be in a clear, easy-to-understand, slow, and deliberate manner and shall contain the information required by paragraphs (1) and (2) of this subsection.

(ii) The recording shall be clearly audible.

(iii) The recording shall include the entire and actual conversation with the customer on audio tape, a wave sound file, or other recording device that is compatible with the commission's equipment.

(iv) The recording shall be dated and include clear and conspicuous confirmation that the customer consented to recording the conversation and authorized the charges for a product or service on the customer's telephone bill.

(D) Independent Third Party Verification. Independent third party verification of consent shall meet the following requirements:

(i) Verification shall be given to an independent and appropriately qualified third party with no participation by a service provider, except as provided in clause (vii) of this subparagraph.

(ii) Verification shall be recorded.

(iii) The recorded conversation with a customer shall contain explicit customer consent to record the conversation, be in a clear, easy-to-understand, slow, and deliberate manner and shall comply with each of the requirements of paragraphs (1) and (2) of this subsection for the sole purpose of verifying the customer's consent of the charges for a product or service on the customer's telephone bill.

(iv) The recording shall be clearly audible.

(v) The independent third party verification shall be conducted in the same language used in the sales transaction.

(vi) Automated systems shall provide customers the option of speaking with a live person at any time during the call.

(vii) A service provider or its sales representative initiating a three-way call or a call through an automated verification system shall disconnect from the call once a three-way connection with the third party verifier has been established unless the service provider meets the following requirements:

(I) the service provider files sworn written certification with the commission that the sales representative is unable to disconnect from the sales call after initiating third party verification. Such certification should provide sufficient information describing the reason(s) for the inability of the sales agent to disconnect from the line after the third party verification is initiated. The service provider shall be

exempt from this requirement for a period of two years from the date the certification was filed with the commission;

(II) the service provider seeking to extend its exemption from this clause must, before the end of the two-year period, and every two years thereafter, recertify to the commission its continued inability to comply with this clause.

(III) The independent third party verification shall immediately terminate if the sales agent of an exempt service provider, pursuant to sub clause (I) of this clause, responds to a customer inquiry, speaks after third party verification has begun, or in any manner prompts one or more of the customer's responses.

(viii) The independent third party shall:

(I) not be owned, managed, directed or directly controlled by the service provider or the service provider's marketing agent;

(II) not have financial incentive to verify the consent to charges; and

(III) operate in a location physically separate from the service provider or the service provider's marketing agent.

(ix) The recording shall include the entire and actual conversation with the customer on audio tape, a wave sound file, or other recording device that is compatible with the commission's equipment.

(x) The recording shall be dated and include clear and conspicuous confirmation that the customer authorized the charges for a product or service on the customer's telephone bill.

(5) Any other verification method approved by the FCC.

(6) A record of the verification required by subsection (f) of this section shall be maintained by the service provider offering the product or service for at least 24 months immediately after the verification was obtained from the customer.

(g) **Expiration of consent and verification.**

(1) If a customer consents to obtain a product or service but that product or service is not provisioned within 60 calendar days from the date of customer consent:

(A) The customer's consent is null and void, and

(B) Before the charge may appear on the customer's bill, the service provider must obtain new consent and verification of that new consent in accordance with this section.

(2) Paragraphs (1)(A) and (B) of this subsection do not apply to verification of consent relating to multi-line and/or multi-location business customers that have entered into negotiated agreements with a service provider for a product or service provisioned under and during the term specified in the agreement. The verified consent shall be valid for the period specified in the agreement.

(h) **Unauthorized charges.**

(1) Responsibilities of the billing telecommunications utility for unauthorized charges. If a customer's telephone bill is charged for any product or service without proper customer verified consent in compliance with this section, the telecommunications utility that billed the customer, on its knowledge or notification of any unauthorized charge, shall promptly, but not later than 45 calendar days after the date of the knowledge or notification of an unauthorized charge meet the following requirements:

(A) A billing utility shall:

(i) notify the service provider to immediately cease charging the customer for the unauthorized product or service;

(ii) remove the unauthorized charge from the customer's bill;

(iii) refund or credit to the customer all money that has been paid by the customer for any unauthorized charge, and if any unauthorized charge that has been paid is not refunded

or credited within three billing cycles, shall pay interest at an annual rate established by the commission pursuant to §26.27 of this title (relating to Bill Payment and Adjustments) on the amount of any unauthorized charge until it is refunded or credited;

(iv) on the customer's request, provide the customer with all billing records under its control related to any unauthorized charge within 15 business days after the date of the removal from the customer's telephone bill;

(v) provide the service provider with the date the customer requested that the unauthorized charge be removed from the customer's bill and the dates of the actions required by clauses (ii) and (iii) of this subparagraph, and

(vi) maintain for at least 24 months a record of every customer who has experienced any unauthorized charge for a product or service on the customer's telephone bill and has notified the billing telecommunications utility of the unauthorized charge. The record shall contain for each alleged unauthorized charge:

(I) the name of the service provider that offered the product or service;

(II) the affected telephone number(s) and addresses;

(III) the date each customer requested that the billing telecommunications utility remove the unauthorized charge from the customer's telephone bill;

(IV) the date the unauthorized charge was removed from the customer's telephone bill; and

(V) the date the customer was refunded or credited any money that the customer paid for the unauthorized charges.

(B) A billing telecommunications utility shall not:

(i) suspend or disconnect telecommunications service to any customer for nonpayment of an unauthorized charge; or

(ii) file an unfavorable credit report against a customer who has not paid charges that the customer has alleged were unauthorized unless the dispute regarding the unauthorized charges is ultimately resolved against the customer. The customer shall remain obligated to pay any charges that are not in dispute, and this paragraph does not apply to those undisputed charges.

(2) Responsibilities of the service provider for unauthorized charges. The service provider responsible for placing any unauthorized charge on a customer's telephone bill shall:

(A) immediately cease billing upon notice from the customer or the billing telecommunications utility for a product or service that a charge for such product or service has not been authorized by the customer;

(B) for at least 24 months following the completion of all of the steps required by paragraph (1)(A) of this subsection, maintain a record for every disputed charge for a product or service on the customer's telephone bill. Each record shall contain:

(i) the affected telephone number(s) and addresses;

(ii) the date the customer requested that the billing telecommunications utility remove the unauthorized charge from the customer's telephone bill;

(iii) the date the unauthorized charge was removed from the customer's telephone bill; and

(iv) the date that action was taken to refund or credit to the customer any money that the customer paid for the unauthorized charges; and

(C) not resubmit any unauthorized charge to the billing telecommunications utility for any past or future period.

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

(1) Each notice provided as set out in paragraph (2) of this subsection shall also contain the billing telecommunications utility's name, address, and a working, toll-free telephone number for customer contacts.

(2) Every billing telecommunications utility shall provide the following notice, verbatim, to each of the utility's customers:

****

Charges on Your Telephone Bill
Your Rights as a Customer

Placing charges on your phone bill for products or services without your consent is known as "cramming" and is prohibited by law. Your telephone company may be providing billing services for other companies, so other companies' charges may appear on your telephone bill.

If you believe you were "crammed," you should contact the telephone company that bills you for your telephone service, (insert name of company), at (insert company's toll-free telephone number) and request that it take corrective action. The Public Utility Commission of Texas requires the billing telephone company to do the following within 45 calendar days of when it learns of the unauthorized charge:

- Notify the service provider to cease charging you for the unauthorized product or service;
- remove any unauthorized charge from your bill;
- refund or credit all money to you that you have paid for an unauthorized charge; and
- on your request, provide you with all billing records related to any unauthorized charge within 15 business days after the charge is removed from your telephone bill.

If the company fails to resolve your request, or if you would like to file a complaint, please write or call the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or toll-free in Texas at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

Your phone service cannot be disconnected for disputing or refusing to pay unauthorized charges.

You may have additional rights under state and federal law. Please contact the Federal Communications Commission, the Attorney General of Texas, or the Public Utility Commission of Texas if you would like further information about possible additional rights.

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(3) Distribution and timing of notice.
   (A) Each billing telecommunications utility shall mail the notice as set out in paragraph (2) of this subsection to each of its residential and business customers within 60 calendar days after the effective date of this section, or by inclusion in the next publication of the utility's telephone directory following 60 calendar days after the effective date of this section. In addition, each billing telecommunications utility shall send the notice to new customers at the time service is initiated and on any customer's request.
   (B) Every telecommunications utility that prints its own telephone directories shall print the notice in the white pages of such directories, in nine point print or larger, beginning with the first publication of the directories after 60 calendar days following the effective date of this section; thereafter, the notice must appear in the white pages of each telephone directory published by or for the telecommunications utility.

(4) Any bill sent to a customer from a telecommunications utility must include a statement, prominently located in the bill, that if the customer believes the bill includes unauthorized charges, the customer may contact: Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, (512)

936-7120 or toll-free in Texas at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

(5) Each billing telecommunications utility shall make available to its customers the notice as set out in paragraph (2) of this subsection in both English and Spanish as necessary to adequately inform the customer; however, the commission may exempt a billing telecommunications utility from the requirement that the information be provided in Spanish upon application and a showing that 10% or fewer of its customers are exclusively Spanish-speaking, and that the billing telecommunications utility will notify all customers through a statement in both English and Spanish, as an addendum to the notice, that the information is available in Spanish from the telecommunications utility, both by mail and at the utility's offices.

(6) The customer notice requirements in paragraphs (1) and (2) of this subsection may be combined with the notice requirements of §26.130(g)(3) of this title if all of the information required by each is in the combined notice.

(7) The customer notice requirements in paragraph (4) of this subsection may be combined with the notice requirements of §26.130(i)(4) of this title if all of the information required by each is in the combined notice.

(j) **Complaints to the commission.** A customer may file a complaint with the commission's Customer Protection Division (CPD) against a service provider, billing agent or billing telecommunications utility for any reasons related to the provisions of this section.

(1) Customer complaint information. CPD may request, at a minimum, the following information:

(A) the customer's name, address, and telephone number;

(B) a brief description of the facts of the complaint;

(C) a copy of the customer's and spouse's legal signature; and

(D) a copy of the most recent phone bill and any prior phone bill that shows the alleged unauthorized product or service.

(2) Service provider's, billing agent's or billing utility's response to complaint. After review of a customer's complaint, CPD shall forward the complaint to the service provider, billing agent or billing telecommunications utility named in that complaint. The service provider, billing agent or telecommunications utility shall respond to CPD within 21 calendar days after CPD forwards the complaint. The response shall include, to the extent it is within the custody or control of the service provider, billing agent or billing telecommunications utility, the following:

(A) all documentation related to verification of customer consent used to charge the customer for the product or service; and

(B) all corrective actions taken as required by subsection (h) of this section, if the customer's consent for the charge for the product or service was not verified in accordance with subsection (f) of this section.

(k) **Compliance and enforcement.**

(1) Records of customer verifications. A service provider, billing agent or billing telecommunications utility shall provide a copy of records maintained under the requirements of subsections (d) and (f) of this section to the commission staff within 21 calendar days of a request for such records.

(2) Records of disputed charges. A billing telecommunications utility or a service provider shall provide a copy of records maintained under the requirements of subsection (h) of this section to the commission staff within 21 calendar days of a request for such records.

(3) Failure to provide thorough response. The proof of verified consent as required pursuant to subsection (j)(2)(A) of this section must establish a valid authorized charge as defined by subsection (f) of this section. Failure to timely submit a response that addresses the complainant's assertions within the time specified in subsections (j)(2), (k)(1), and (k)(2) of this section establishes a violation of this section.

(4) Administrative penalties. If the commission finds that a billing telecommunications utility has violated any provision of this section, the commission shall order the utility to take corrective action, as necessary, and the utility may be subject to administrative penalties and other enforcement actions pursuant to PURA, Chapter 15 and §22.246 of this title (relating to Administrative Penalties).

(5) Evidence. Evidence provided by the customer that meets the standards set out in Texas Government Code §2001.081, including, but not limited to, one or more affidavits from a customer challenging the charge, is admissible in a proceeding to enforce the provisions of this section.

(6) Additional Corrective Action. If the commission finds that any other service provider or billing agent subject to PURA, Chapter 17, Subchapter D, or Chapter 64, Subchapter D, has violated any provision of this section or has knowingly provided false information to the commission on matters subject to PURA, Chapter 17, Subchapter D, or Chapter 64, Subchapter D, the commission shall order the service provider or billing agent to take corrective action, as appropriate, and the commission may enforce the provisions of PURA, Chapter 15 and §22.246 of this title, against the service provider or billing agent as if the service provider or billing agent were regulated by the commission.

(7) Certificate suspension, restriction or revocation. If the commission finds that a billing telecommunications utility or a service provider has repeatedly violated this section, and if consistent with the public interest, the commission may suspend, restrict, or revoke the registration or certificate of the telecommunications service provider, thereby denying the service provider the right to provide service in this state. The commission may not revoke a certificate of convenience and necessity of a telecommunications utility except as provided by PURA §54.008.

(8) Termination of billing and collection services. If the commission finds that a service provider or billing agent has repeatedly violated any provision of PURA, Chapter 17, Subchapter D, or Chapter 64, Subchapter D, the commission may order the billing utility to terminate billing and collection services for that service provider or billing agent.

(9) Coordination with Office of Attorney General. The commission shall coordinate its enforcement efforts regarding the prosecution of fraudulent, unfair, misleading, deceptive, and anticompetitive business practices with the Office of the Attorney General in order to ensure consistent treatment of specific alleged violations.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter B. CUSTOMER SERVICE AND PROTECTION.

§26.33. Prompt Payment Act.

(a) **Application.** This section applies to billing by a certificated telecommunication utility (CTU) to a "governmental entity" as defined in Texas Government Code Chapter 2251, the Prompt Payment Act (PPA). This section controls over other sections of this chapter to the extent that they conflict.

(b) **Time for payment by a governmental entity.** A payment by a governmental entity shall become overdue as provided in the PPA.

(c) **Disputed bills.** If there is a billing dispute between a governmental entity and a CTU about any bill for CTU service, the dispute shall be resolved as provided in the PPA.

(d) **Interest on overdue payment.** Interest on an overdue governmental entity payment shall be calculated by the governmental entity pursuant to the terms of the PPA and remitted to the CTU with the overdue payment. However, pursuant to §26.27(a)(2) of this title (relating to Bill Payment and Adjustments), a governmental entity that is also an agency in any branch of government is not subject to a fee, penalty, interest, or other charge to the state for delinquent payment of a bill from a dominant certificated telecommunications utility.

(e) **Notice.** A CTU shall provide written notice to all of its non-residential customers of the applicability of the PPA to the CTU's service to governmental entities. This notice shall be completed within six months of the effective date of this section for existing non-residential customers and, within three months of the effective date of this section, shall be provided to a new customer at or before the time that the terms of service are provided to the customer. A CTU's failure to provide this notice does not give rise to any independent claim under the PPA, nor does this notice initiate or terminate any party's rights or obligations under the PPA.

(1) The failure of a CTU to provide written notice in accordance with this subsection may be considered in a PPA billing complaint.

(2) The failure of a governmental entity to inform the CTU of its status as a governmental entity may be considered in a PPA billing complaint.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter B. CUSTOMER SERVICE AND PROTECTION.

§26.34. Telephone Prepaid Calling Services.

(a) **Purpose.** The provisions of this section are intended to prescribe standards for the information a prepaid calling services provider shall disclose to customers about the rates and terms of service for prepaid calling services offered in this state.

(b) **Application.** This section applies to any "telecommunications utility" as that term is defined in §26.5 of this title (relating to Definitions). This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier utility under Public Utility Regulatory Act (PURA) §52.154. This section also does not apply to a credit calling card in which a customer pays for a service after use and receives a monthly bill for such use.

(c) **Liability.** The prepaid calling services company shall be responsible for ensuring, either through its contracts with its network provider, distributors and marketing agents or other means, that:

(1) end-user purchased prepaid calling services remain usable in accordance with the requirements of this section; and

(2) compliance requirements of all disclosure provisions of this section are met.

(d) **Definitions.** The following terms used in this section shall have the following meanings, unless the context indicates otherwise:

(1) Access telephone number -- The number that allows a prepaid calling services customer to access the services of a telecommunications utility to place telephone calls.

(2) Billing increment -- A unit of time used to charge customers for prepaid calling services.

(3) Personal identification number (PIN) -- A number assigned as an authorization code that ensures system security for a prepaid calling services customer and allows the prepaid calling services company to track minutes used.

(4) Prepaid calling services account -- An amount of money paid by a customer in advance to access the services of a telecommunications utility to place telephone calls. When the customer makes completed telephone calls, the value of the account decreases at a predetermined rate.

(5) Prepaid calling card -- A card or any other device purchased to establish a prepaid calling services account.

(6) Prepaid calling services -- Any telecommunications transaction in which:

(A) a customer pays in advance for telecommunications services;

(B) the customer's prepaid calling services account is depleted at a predetermined rate as the customer uses the service; and

(C) the customer must use a PIN and an access telephone number to use the telecommunications services.

(7) Prepaid calling services company -- A company that provides prepaid calling or other telecommunications services to the public using its own telecommunications network or resold telecommunications services, or distributors who purchase PINs or telecommunications services to resell to the end-user customer.

(8) Recharge -- A transaction in which the value of the prepaid calling services account is renewed. The customer must be informed verbally or electronically of the new rates and surcharges at the time of recharge.

(9) Surcharge -- any fee or cost charged against a prepaid calling services account in addition to a per-minute rate or billing increment, including but not limited to connection, payphone, and maintenance fees.

(e) **Billing requirements for prepaid calling services.**

(1) Billing increments shall be defined and disclosed in the prepaid calling services company's published tariffs or price list on file with the commission and on any display at the point of sale as well as on any prepaid calling card, or on any prepaid calling card packaging.

(2) A prepaid calling services account may be decreased only for a completed call. Station busy signals and unanswered calls shall not be considered completed calls and shall not be charged against the account.

(3) A surcharge may not be levied more than once on a given call.

(4) Prepaid calling services companies may not reduce the value of a prepaid calling services account by more than the company's published domestic tariffs or price list on file with the commission and any surcharges filed at the commission. Domestic rates and surcharges shall be disclosed at the time of purchase. Current international rates shall be disclosed at the time of purchase with an explanation, if applicable, that these prices may be subject to change.

(5) The prepaid calling services account may be recharged by the customer at a different domestic rate from the original domestic rate or the last domestic recharge rate as long as the new domestic rate and any domestic or international surcharges conform with the company's published tariff or price list on file with the commission at the time of recharge. The customer must be informed of the rates at the time of recharge. A prepaid calling services company shall keep internal records of changes to its international rates and shall provide customers with the appropriate international rate information through a toll-free telephone number. International prepaid calling services rates shall continue to be updated annually in accordance with §26.89 of this title (relating to Information Regarding Rates and Services of Nondominant Carriers.)

(6) Upon verbal or written request, prepaid calling services companies must be capable of providing customers the following call detail data information at no charge:

(A) Dialing and signaling information that identifies the inbound access telephone number called;

(B) The number of the originating telephone;

(C) The date and time the call originated;

(D) The date and time the call terminated;

(E) The called telephone number; and

(F) The PIN and/or account number associated with the call.

(7) Prepaid calling services companies shall maintain call detail data records for at least two years.

(f) **Written disclosure requirements for all prepaid calling services.**

(1) **Information required on prepaid calling cards**. Cards must be issued with all information required by subparagraphs (A) and (B) of this paragraph in at least the same language in which the card is marketed. Bilingual cards are permitted as long as all the information in subparagraphs (A) and (B) of this paragraph is printed in both languages.

(A) At a minimum, a card must contain the following information printed in a legible font no smaller than eight-point:

(i) The toll-free number as required by subsection (i) of this section;

(ii) The maximum rate per minute shall be shown for local, intrastate, and interstate calls. International call prices shall be provided to the customer through a toll-free number printed on the card. If the cost for a one minute call is higher than the maximum rate per minute, it must be printed on the prepaid calling card; and

(iii) The words "VOID" or "SAMPLE" or sequential numbers, such as "999999999" on both sides of the card if the card was produced as a "non-active" card so that

it is obvious to the customer that the card is not useable. If the card is not so labeled, the card is considered active and the issuing company shall honor it.

(B) At a minimum, a card must contain the following information printed in legible font no smaller than five-point:

(i) The value of the card and any applicable surcharges shall be expressed in the same format (i.e. a card whose value is expressed in minutes shall express surcharges in minutes). If the value of a card is expressed in minutes, the minutes must be identified as domestic or international and the identification must be printed on the same line or next line as the value of the card in minutes;

(ii) The prepaid calling services company's name as registered with the commission. A "doing business as" name may only be used if officially filed with the commission. The language shall clearly indicate that the company is providing the prepaid calling services;

(iii) Instructions on using the card correctly; and

(iv) Expiration date or policy, if the card cannot be used after a date certain. If an expiration date or policy is not disclosed on the card, it will be considered active indefinitely.

(2) **Information required at a point of sale.** All the following information shall be legibly printed on or in any packaging in a minimum eight point font and displayed visibly in a prominent area at the point of sale so that the customer may make an informed decision before purchase. Bilingual information may be made available as long as all the information below is printed in both languages.

(A) A listing of applicable surcharges;

(B) The company's name as registered with the commission. A "doing business as" name may only be used if officially filed with the commission. The language shall clearly indicate that the company is providing the prepaid calling card services;

(C) The toll-free number as required by subsection (i) of this section;

(D) The billing increment expressed in minutes or fractions of minutes and maximum charge per billing increment for prepaid calling card services for local, intrastate, interstate, and international calls will be provided to the customer through a toll-free number printed on the card;

(E) The expiration policy, if the card cannot be used after a date certain. If an expiration date is not disclosed at the time of purchase, the prepaid calling services will be considered active until the prepaid calling services account is completely depleted;

(F) The recharge policy, if applicable. If an expiration date is not disclosed at the time prepaid calling services are recharged, the services will be considered active until the prepaid calling services account is completely depleted;

(G) The policy for rounding billing increments, if applicable;

(H) A statement that if a customer is unable to resolve a complaint with the company that the customer has the right to contact the state regulatory agency which has jurisdiction within the state where the prepaid calling services were purchased; and

(I) A statement that:

(i) Notifies a customer of the customer's extent of liability for lost or stolen cards, if there is liability; and

(ii) Warns a customer to safeguard the card against loss or theft.

(3) If a customer asks a prepaid calling services company how to file a complaint, the company must provide the following contact information: Public Utility Commission of Texas, Office of Customer Protection, P.O. Box 13326, Austin, Texas 78711-3326; phone: (512) 936-7120 or in Texas (toll-free) 1-888-782-8477; fax: (512) 936-7003; e-mail address: customer@puc.texas.gov;

Internet address: www.puc.texas.gov; TTY: (512) 936-7136; and Relay Texas (toll-free): 1-800-735-2989.

(g) **Verbal disclosure requirements for prepaid calling services.** Prepaid calling services companies shall provide an announcement:

(1) At the beginning of each call indicating the domestic minutes, billing increments, or dollars remaining on the prepaid calling services account or prepaid calling card; and

(2) When the prepaid account or card balance is about to be completely depleted. This announcement must be made at least one minute or billing increment before the time expires.

(h) **Registration requirements for prepaid calling services companies.** All prepaid calling services companies shall register with the commission in accordance with §26.107 of this title (relating to (relating to Registration of Interexchange Carriers (IXCs), Prepaid Calling Services Companies (PPC), and Other Nondominant Telecommunications Carriers).

(i) **Business and technical assistance requirements for prepaid calling services companies.** A prepaid calling services company shall provide a toll-free number with a live operator to answer incoming calls 24 hours a day, seven days a week or electronically voice record customer inquiries or complaints. A combination of live operators or recorders may be used. If a recorder is used, the prepaid calling services company shall attempt to contact each customer no later than the next business day following the date of the recording. Personnel must be sufficient in number and expertise to resolve customer inquiries and complaints. If an immediate resolution is not possible, the prepaid calling services company shall resolve the inquiry or complaint by calling the customer or, if the customer so requests, in writing within ten working days of the original request. In the event a complaint cannot be resolved within ten working days of the request, the prepaid calling services provider shall advise the complainant in writing of the status and subsequently complete the investigation within 21 working days of the original request.

(j) **Requirements for refund of unused balances.** If a prepaid calling services company fails to provide services at the rates disclosed at the time of initial purchase or at the time an account is recharged, or fails to meet technical standards, the prepaid calling services company shall either refund the customer for any unused prepaid calling services or provide equivalent services.

(k) **Requirements when a prepaid calling services company terminates operations in this state.**

(1) When a prepaid calling services company expects to terminate operations in this state for any reason, the company shall at least 30 days prior to the termination of operations:

(A) Notify the commission in writing:

(i) That operations will be ending;

(ii) Of the date of the termination of operations; and

(iii) That the company certifies that the actions required by this subsection have been completed;

(B) Notify each customer at the address on file with the company, if applicable, that operations will be ending the date of the termination of operations, and explain how customers may receive a refund or equivalent services for any unused services;

(C) Announce the termination of operations at the beginning of each call, including the date of termination and a toll-free number to call for more information; and

(D) Provide to customers via its toll-free customer service number the procedure for obtaining refunds and continue to provide this information for at least 60 days after the date the company terminates operations.

(2) Within 24 hours after ceasing operations, the prepaid calling services company shall deliver to the commission a list of names, if known, and account numbers of all customers with unused balances. For each customer, the list shall include the following:

(A) The identification number used by the company for billing and debit purposes; and,

(B) The unused time, stated in minutes, as applicable, and the unused dollar amount of the prepaid calling services account.

(l) **Date of compliance for prepaid calling card services companies.** All prepaid calling services offered for sale in the state of Texas and all prepaid calling services companies shall be in compliance with this rule within six months of the effective date of this section**.**

(m) **Compliance and enforcement.**

(1) **Administrative penalties.** If the commission finds that a prepaid calling services company has violated any provision of this section, the commission shall order the company to take corrective action, as necessary, and the company may be subject to administrative penalties and other enforcement actions pursuant to the Public Utility Regulatory Act, Chapter 15.

(2) **Enforcement.** The commission shall coordinate its enforcement efforts against a prepaid calling services company for fraudulent, unfair, misleading, deceptive, or anticompetitive business practices with the Office of the Attorney General in order to ensure consistent treatment of specific alleged violations.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter B. CUSTOMER SERVICE AND PROTECTION.

§26.37. Texas No-Call List.

(a) **Purpose.** This section implements the Texas Business & Commerce Code Annotated §44.103 (Bus. & Com. Code) relating to rules, customer information, and isolated violations of the Texas no-call list.

(b) **Application**. This section is applicable to:

(1) Certificated telecommunications utilities (CTUs), as defined by §26.5 of this title (relating to Definitions), that provide local exchange telephone service to residential customers in Texas; and

(2) Telemarketers, as defined in subsection (c)(9) of this section including, but not limited to, retail electric providers as defined in §25.5 of this title (relating to Definitions).

(c) **Definitions.** The following words and terms, when used in this section shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Consumer good or service** — For purposes of this section, consumer good or service has the same meaning as Bus. & Com. Code §44.002(3), relating to Definitions.

(2) **Established business relationship** — A prior or existing relationship that has not been terminated by either party, and that was formed by voluntary two-way communication between a person and a consumer regardless of whether consideration was exchanged, regarding consumer goods or services offered by the person.

(3) **No-call database** — Database administered by the commission or its designee that contains the names, addresses, non-business telephone numbers and dates of registration for all Texas no-call registrants. Lists or other information generated from the no-call database shall be deemed to be a part of the database for purposes of enforcing this section.

(4) **No-call list** — A combined list that is published and distributed as required by subsection (f)(2) of this section and consists of the name and telephone numbers of each consumer in the state who has requested to be on that list and of each person in the portion of the national do-not-call registry maintained by the United States government that relates to this state.

(5) **No-call registrant** — A telephone customer who has registered, by application and, if required, payment of accompanying fee, for the Texas no-call list.

(6) **State licensee** — A person licensed by a state agency under a law of this state that requires the person to obtain a license as a condition of engaging in a profession or business.

(7) **Telemarketing call** — An unsolicited telephone call made to:

(A) solicit a sale of a consumer good or service;

(B) solicit an extension of credit for a consumer good or service; or

(C) obtain information that may be used to solicit a sale of a consumer good or service or to extend credit for sale.

(8) **Telephone call** — A call or other transmission that is made to or received at a telephone number within an exchange in the state of Texas, including but not limited to:

(A) a call made by an automatic dial announcing device (ADAD); or

(B) a transmission to a facsimile recording device.

(9) **Telemarketer** — A person who makes or causes to be made a telemarketing call that is made to a telephone number in an exchange in the state of Texas.

(d) **Requirement of telemarketers.**

(1) A telemarketer shall not make or cause to be made a telemarketing call to a telephone number that has been published for more than 60 calendar days on the Texas no-call list.

(2) A telemarketer shall purchase each published version of the no-call list unless:

(A) the entirety of the telemarketer's business is comprised of telemarketing calls that are exempt pursuant to subsection (e) of this section; or

(B) a telemarketer has a written contractual agreement with a second telemarketer to make telemarketing calls on behalf of the first telemarketer and the second telemarketer is contractually obligated to comply with all requirements of this section. In the absence of a written contract that requires the second telemarketer to comply with all requirements of this section, the first telemarketer and the second telemarketer making telemarketing calls on behalf of the first telemarketer are both liable for violations of this section.

(e) **Exemptions.** This section shall not apply to a telemarketing call made:

(1) By a no-call registrant that is the result of a solicitation by a seller or telemarketer or in response to general media advertising by direct mail solicitations that clearly, conspicuously, and truthfully make all disclosures required by federal or state law;

(2) In connection with:

(A) An established business relationship; or

(B) A business relationship that has been terminated, if the call is made before the later of:

(i) the date of publication of the first Texas no-call list on which the no-call registrant's telephone number appears; or

(ii) one year after the date of termination;

(3) Between a telemarketer and a business, other than by a facsimile solicitation, unless the business informed the telemarketer that the business does not wish to receive telemarketing calls from the telemarketer;

(4) To collect a debt;

(5) By a state licensee if:

(A) The call is not made by an ADAD;

(B) The solicited transaction is not completed until a face-to-face sales presentation by the seller, and the consumer is not required to pay or authorize payment until after the presentation; and

(C) The consumer has not informed the telemarketer that the consumer does not wish to receive telemarketing calls from the telemarketer; or

(6) By a person who is not a telemarketer, as defined in subsection (c)(9) of this section.

(f) **No-call database.**

(1) **Administrator.** The commission or its designee shall establish and provide for the operation of the no-call database.

(2) **Distribution of database.**

(A) Timing. Beginning on April 1, 2002, the administrator of the no-call database will update and publish the entire Texas no-call list on January 1, April 1, July 1, and October 1 of each year;

(B) Fees. The no-call list shall be made available to subscribing telemarketers for a set fee not to exceed $75 per list per quarter;

(C) Format. The commission or its designee will make the no-call list available to subscribing telemarketers by:

(i) electronic internet access in a downloadable format;

(ii) Compact Disk Read Only Memory (CD-ROM) format;

(iii) paper copy, if requested by the telemarketer; and

(iv) any other format agreed upon by the current administrator of the no-call database and the subscribing telemarketer.

(3) **Intended use of the no-call database and no-call list.**

(A) The no-call database shall be used only for the intended purposes of creating a no-call list and promoting and furthering statutory mandates in accordance with the Bus. & Com. Code, Chapter 44, relating to Telemarketing. Neither the no-call database nor a published

no-call list shall be transferred, exchanged or resold to a non-subscribing entity, group, or individual regardless of whether compensation is exchanged.

(B) The no-call database is not open to public inspection or disclosure.

(C) The administrator shall take all necessary steps to protect the confidentiality of the no-call database and prevent access to the no-call database by unauthorized parties.

(4) **Penalties for misuse of information.** Improper use of the no-call database or a published no-call list by the administrator, telemarketers, or any other person regardless of the method of attainment, shall be subject to administrative penalties and enforcement provisions contained in §22.246 of this title (relating to Administrative Penalties).

(g) **Notice.** A CTU shall provide notice of the no-call list to each of its residential customers as specified by this subsection. In addition to the required notice, the CTU may engage in other forms of customer notification.

(1) **Content of notice.** A CTU shall provide notice in compliance with §26.26 of this title (relating to Foreign Language Requirements) that, at a minimum, clearly explains the following:

(A) Beginning January 1, 2002, residential customers may add their name, address and non-business telephone number to a state-sponsored no-call list that is intended to limit the number of telemarketing calls received;

(B) When a customer who registers for inclusion on the no-call list can expect to stop receiving telemarketing calls;

(C) A customer must pay a fee to register for the no-call list unless the customer registers via the commission's internet website address, in which case there is no charge;

(D) Registration of a non-business telephone number on the no-call list expires on the third anniversary of the date the number is first published on the list;

(E) Registration of a telephone number on the no-call list can be accomplished via the United States Postal Service, Internet, or telephonically;

(F) The customer registration fee, which cannot exceed three dollars per term, must be paid by credit card when registering by telephone. When registering by mail, the fee must be paid by credit card, check or money order;

(G) The toll-free telephone number, website address, and mailing address for registration; and

(H) A customer that registers for inclusion on the no-call list may continue to receive calls from groups, organizations, and persons who are exempt from compliance with this section, including a listing of the entities exempted as specified in subsection (e) of this section.

(2) **Publication of notice.**

(A) Telephone directory. A CTU that publishes, or has an affiliate that publishes, a residential telephone directory may include in the directory a prominently displayed Internet website address, toll-free number and mailing address, established by the commission, through which a person may request a form for, or request to be placed on, the Texas no-call list in order to avoid unwanted telemarketing calls.

(B) Notice to individual customers. A CTU shall provide notice of the Texas no-call list to each of its residential customers in Texas by one or more of the methods listed in clauses (i)–(v) of this subparagraph.

(i) an insert in the customer's billing statement. Electronic notification is permissible for a customer who, during the notification period, is receiving billing statements from the CTU in an electronic format;

(ii) a bill message;

(iii) separate direct mailing;

(iv) customer newsletter; or

(v) Customer Rights disclosure as provided in §26.31(a)(4) of this title (relating to Disclosures to Applicants and Customers).

(3) **Timing of notice.** Beginning in 2002, a CTU shall provide notice of the Texas no-call list to its residential customers using one of the methods listed in paragraph (2)(B)(i)-(v) of this subsection.

(A) A CTU that uses a notification method listed in paragraph (2)(B)(i)-(iv) of this subsection, shall provide the notice annually beginning in 2002. The annual notice shall be easily legible, prominently displayed, and comply with the requirements listed in paragraph (1) of this subsection.

(B) A CTU that elects the Customer Rights disclosure as its notification method as allowed in paragraph (2)(B)(v) of this subsection shall comply with the timing of distribution requirement in §26.31(a)(4) of this title. The no-call list information provided in the Customer Rights disclosure shall comply with paragraph (1) of this subsection.

(4) **Records of customer notification.** Upon commission request, a CTU shall provide a copy of records maintained under the requirements of this subsection to the commission. A CTU shall retain records maintained under the requirements of this subsection for a period of two years.

(h) **Violations.**

(1) **Separate occurrence.** Each telemarketing call to a telephone number on the no-call list shall be deemed a separate occurrence. Upon request from the commission or commission staff, a telemarketer shall provide, within 21 days of receipt of such a request, all information relating to the commission's investigation of complaints regarding alleged violations of the no-call list such as call logs or phone records.

(2) **Isolated occurrence.** A telemarketing call made to a number on the no-call list is not a violation of this section if the telemarketer complies with subsection (d)(2) and the telemarketing call is determined to be an isolated occurrence.

(A) An isolated occurrence is an event, action, or occurrence that arises unexpectedly and unintentionally, and is caused by something other than a failure to implement or follow reasonable procedures. An isolated occurrence may involve more than one separate occurrence, but it does not involve a pattern or practice.

(B) The burden to prove that the telemarketing call was made in error and was an isolated occurrence rests upon the telemarketer who made (or caused to be made) the call. In order for a telemarketer to assert as an affirmative defense that an alleged violation of this section was an isolated occurrence, the telemarketer must provide evidence of the following:

(i) The telemarketer has purchased the most recently published version of the Texas no-call list, unless the entirety of the telemarketer's business is comprised of telemarketing calls that are exempt pursuant to subsection (e) of this section and the telemarketer can provide sufficient proof of such;

(ii) The telemarketer has adopted and implemented written procedures to ensure compliance with this section and effectively prevent telemarketing calls that are in violation of this section, including taking corrective actions when appropriate;

(iii) The telemarketer has trained its personnel in the established procedures; and

(iv) The telemarketing call that violated this section was made contrary to the policies and procedures established by the telemarketer.

(i) **Record retention; Provision of records; Presumptions.**

(1) A telemarketer shall maintain a record of all telephone numbers it has attempted to contact for telemarketing purposes, a record of all telephone numbers it has contacted for telemarketing purposes, and the date of each, for a period of not less than 24 months from the date the telemarketing call was attempted or completed.

(2) Upon request from the commission or commission staff, a telemarketer shall provide, within 21 calendar days of receipt of such request, all information in its possession and upon which it relies to demonstrate compliance with this section, relating to the commission's investigation of alleged violations of the no-call list including, but not limited to, the call logs or phone records described in subsection (i)(1) of this section.

(3) Failure by the telemarketer to respond, or to provide all information in its possession and upon which it relies to demonstrate compliance with subsections (d) and (i) of this section within the time specified in paragraph (2) of this subsection establishes a violation of this section.

(4) Failure of a telemarketer to provide all telemarketing information in its possession and upon which it relies to demonstrates compliance with this section and, if applicable, to establish an affirmative defense pursuant to subsection (h)(2)(B) of this section within the time specified in paragraph (2) of this subsection establishes a violation of this section.

(j) **Evidence.** Evidence provided by the customer that meets the standards set out in Texas Government Code §2001.081, including, but not limited to, one or more affidavits from a customer, is admissible in a proceeding to establish a violation of this section.

(k) **Enforcement and penalties.**

(1) **State licensees.** A state agency that issues a license to a state licensee may receive and investigate complaints concerning violations of this section by the state licensee.

(2) **Telecommunications providers.** The commission has jurisdiction to investigate violations of this section made by telecommunications providers, as defined in the Public Utility Regulatory Act (PURA) §51.002.

(3) **Retail electric providers.** The commission has jurisdiction to investigate violations of this section made by retail electric providers (REPs) as specified in §25.492 of this title (relating to Non-Compliance with Rules or Orders; Enforcement by the Commission).

(4) **Other Telemarketers**. A telemarketer, other than a state licensee or telecommunications provider, that violates this section shall be subject to enforcement action pursuant to §22.246 of this title.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter C. INFRASTRUCTURE AND RELIABILITY.

§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 of this title (relating to Definitions). This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Regulatory Act (PURA) §52.154. This section also does not apply to the retail services of an electing company, as defined by PURA §58.002, or to the retail nonbasic services offered by a transitioning company, as defined by PURA §65.002.

(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 it 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 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.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter C. INFRASTRUCTURE AND RELIABILITY.

§26.52. Emergency Operations.

(a) This section does not apply to the retail services of an electing company, as defined by the Public Utility Regulatory Act (PURA) §58.002, or to the retail nonbasic services offered by a transitioning company, as defined by PURA §65.002.

(b) Each dominant certificated telecommunications utility's (DCTU) central office not equipped with permanently installed standby generators shall contain as a minimum four hours of battery reserve without voltage falling below the level required for proper operation of all equipment. It is also essential that all central offices have adequate provisions for emergency power. In offices without installed emergency power facilities, there shall be a mobile power unit available which can be delivered and connected on short notice.

(c) In exchanges exceeding 5,000 lines, a permanent auxiliary power unit shall be installed.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter C. INFRASTRUCTURE AND RELIABILITY.

§26.53. Inspections and Tests.

(a) This section does not apply to the retail services of an electing company, as defined by Public Utility Regulatory Act (PURA) §58.002, or to the retail nonbasic services offered by a transitioning company, as defined by PURA §65.002.

(b) Each dominant certificated telecommunications utility (DCTU) shall adopt a program of periodic tests, inspections, and preventive maintenance aimed at achieving efficient operation of its system and rendition of safe, adequate, and continuous service.

(c) Each DCTU shall maintain or have access to test facilities enabling it to determine the operating and transmission capabilities of all equipment and facilities. The actual transmission performance of the network shall be monitored to determine if the service objectives in this chapter are met. This monitoring function shall include, but not be limited to, circuit order tests prior to placing trunks in service, routine periodic trunk maintenance tests, tests of actual switched trunk connections, periodic noise tests of a sample of customer loops in each exchange, and special transmission surveys of the network.

(d) Each central office serving more than 300 customer access lines shall be equipped with a 1,000 +/- 20 hertz, one milliwatt test signal generator and a 900 Ohm balanced termination device wired to telephone numbers so that they may be accessed for dial test purposes. Each DCTU shall advise the commission of the numbers assigned for these test terminations.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter C. INFRASTRUCTURE AND RELIABILITY.

§26.54. Service Objectives and Performance Benchmarks.

(a) This section establishes service objectives that should be provided by a dominant certificated telecommunications utility (DCTU), as applicable. A deregulated company that holds a certificate of operating authority or a transitioning company in a market that is deregulated is exempt from complying with the retail quality of service standards and reporting requirements in this section. The section outlines performance benchmark levels for each exchange. If service quality falls below the applicable performance benchmark for an exchange, that indicates a need for the utility to investigate, take appropriate corrective action, and provide a report of such activities to the commission. The objective service levels are based on monthly averages, except for dial service and transmission requirements, which are based on specific samples. DCTUs shall make measurements to determine the level of service quality for each item included in this section. Each DCTU shall provide the commission with the measurements and summaries for any of the items included herein on request of the commission. Records of these measurements and summaries shall be retained by the DCTU as specified by the commission.

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

(1) One-party line service will be made available to all subscribers of local exchange service upon request.

(2) All open wire transmission media shall be replaced with more reliable and better quality transmission media by the end of 1998, unless otherwise exempted by the commission. Any utility that obtained an exemption from this requirement shall file a report with the commission on the status of its open wire replacement program by June 1, 2000, and if all open wire replacement is not complete by that date, every three months thereafter until the replacement program is complete.

(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).

(c) The DCTU shall comply with the service quality objectives established below in providing the basic telecommunications service to its end-use customers. The DCTU shall file its service quality performance report on a quarterly basis. The report shall include its monthly performance for each category of performance objective and a summary of its corrective action plan for each exchange in which the performance falls below the benchmark. Additionally, the corrective action plan shall include, at a minimum, details outlining how the needed improvements will be implemented within three months and result in performance at or above the applicable benchmark.

(1) **Installation of service.** Unless otherwise provided by the commission:

(A) Ninety-five percent of the DCTU's service orders for installing primary service shall be completed within five working days, excluding those orders where a later date was specifically requested by the customer. Performance Benchmark Applicable for Corrective Action: If the performance is below 95% in any exchange area for a period of three consecutive months, the DCTU shall provide a detailed corrective action plan for such exchanges or wire centers.

(B) Ninety percent of the DCTU's service orders for regular service installations shall be completed within five working days, excluding those orders where a later date was specifically requested by the customer. This includes orders for primary and other services, installations, moves, or changes, but not complex services. Performance Benchmark for Corrective Action: If the performance is below 90% in any exchange area for a period of three consecutive months the DCTU shall provide a detailed corrective action plan for such exchanges or wire centers.

(C) Ninety-nine percent of the DCTU's service orders for service installations shall be completed within 30 days. Performance Benchmark for Corrective Action: If the

performance is below 99% in any exchange area for a period of three consecutive months, the DCTU shall provide a detailed corrective action plan for such exchange or wire center.

(D) One-hundred percent of the DCTU's service orders for service installations shall be completed within 90 days.

(E) Each DCTU shall establish and maintain installation time commitment guidelines for the various complex services contained in its tariff. Those guidelines should be available for public review and should be applied in a nondiscriminatory manner.

(F) The installation interval measurements outlined in subparagraphs (A) - (D) and (H) of this paragraph shall commence with either the date of application or the date on which the applicant qualifies for service, whichever is later.

(G) The DCTU shall provide to the customer a due date on which the requested installation or change shall be made. If a customer requests that the work be done on a regular working day later than that offered by the DCTU, then the customer's requested date shall be the commitment date. If a premises visit is required, the DCTU shall schedule an appointment period with the customer for morning or afternoon, not to exceed a four-hour time period, on the due date. If the DCTU is unable to keep the appointment, the DCTU shall attempt to notify the customer by a telephone call and schedule a new appointment. If unable to gain access to the customer's premises during the scheduled appointment period, the DCTU carrier representative shall leave a notice at the premises advising the customer how to reschedule the work.

(H) Ninety percent of the DCTU's commitments to customers for the date of installation of service orders shall be met, excepting customer-caused delays. Performance Benchmark Applicable for Corrective Action: If the performance is below 90% in any exchange area for a period of three consecutive months, the DCTU shall submit a list of missed commitments to the commission and provide a detailed corrective action plan for such exchange or wire center.

(I) The installation interval and commitment requirements of subparagraphs (A) - (D) and (H) of this paragraph do not include service orders either to disconnect service or to make only record changes on a customer's account.

(J) A held regrade order is one not filled within 30 days after the customer has made application for a different grade of service except where the customer requests a later date. In the event of the DCTU's inability to so fill such an order, the customer should be advised and told when the DCTU can fulfill the order. The number of held regrade orders shall not exceed 1.0% of the total number of customer access lines served.

(2) **Operator-handled calls.** DCTUs shall maintain adequate personnel to provide an average operator answering performance as follows for each exchange on a monthly basis:

(A) Eighty-five percent of toll and assistance operator calls answered within ten seconds, or average answer time shall not exceed 3.3 seconds. Benchmark for Corrective Action: If the performance is either below 85% within ten seconds or if the average exceeds 3.3 seconds at any answering location in any given month, the DCTU shall provide a detailed corrective action plan for such exchange or wire center.

(B) Ninety percent of repair service calls shall be answered within 20 seconds or average answer time shall not exceed 5.9 seconds. Benchmark for Corrective Action: If the performance is below 90% within 20 seconds or the average answer time exceeds 5.9 seconds at any answering location for a period of five days within any given month, the DCTU shall provide a detailed corrective action plan for such exchange or wire center.

(C) Eighty-five percent of directory assistance calls shall be answered within ten seconds or the average answer time shall not exceed 5.9 seconds. Benchmark for Corrective Action: If the performance is either below 85% within ten seconds or if the average answer time

exceeds 5.9 seconds at any answering location in any given month, the DCTU shall provide a detailed corrective action plan for such exchange or wire center.

(D) An "answer" shall mean that the operator, interactive voice system, or representative, is ready to render assistance and/or ready to accept information necessary to process the call. An acknowledgment that the customer is waiting on the line shall not constitute an "answer."

(E) DCTUs may measure answer time on a toll center or operating unit basis in lieu of measuring answer time in each exchange unless specifically requested by the commission.

(3) **Local dial service.** Sufficient central office capacity and equipment shall be provided to meet the following requirements:

(A) dial tone within three seconds on 98% of calls. For record-keeping and reporting purposes, 96% in three seconds during average busy season and/or busy hour shall be acceptable as complying with this requirement;

(B) completion of 98% of intraoffice calls (those calls originating and terminating within the same central office building) without encountering an equipment busy condition (blockage) or equipment failure;

(C) for every switch that serves customers, the availability factor for stored program controlled digital and analog switching facilities shall be 99.99%, or the total unscheduled outage for each switch shall not exceed 53 minutes per year.

(D) A report detailing the cause and proposed corrective action for the local dial service measures, for any exchange that falls below the established performance objective level, must be submitted to the commission.

(4) **Local interoffice dial service.**

(A) Each DCTU shall provide and maintain interoffice trunks on its portion of the local exchange service network so that 97% of the interoffice local calls excluding calls between central offices in the same building are completed without encountering equipment busy conditions or equipment failures. For DCTUs' testing, record-keeping, and reporting purposes, DCTUs are not required to separate local dial service results from local interoffice dial service results unless specifically requested by the commission.

(B) The availability factor for stored program controlled digital and analog switching and interoffice transmission facilities for end-to-end transmission shall be 99.93%, or the total unscheduled outage shall not exceed 365 minutes per year.

(C) A report detailing the cause and proposed corrective action for the local dial service measures, for any exchange that falls below the established performance objective level, must be submitted to the commission.

(5) **Direct distance dial service.** Engineering and maintenance of the trunk and related switching components in the toll network shall permit 97% completion on properly dialed calls, without encountering failure because of blockages or equipment irregularities. A report detailing the cause and proposed corrective action for the direct distance dial service measure, for any exchange that falls below the established performance objective level, must be submitted to the commission.

(6) **Customer trouble reports.**

(A) The DCTU that serves more than 10,000 access lines shall maintain its network service in a manner that it receives no more than three customer trouble reports on a company-wide basis, excluding customer premises equipment (CPE) reports, per 100 customer access lines per month (on average). Performance Benchmark Applicable for Corrective Action: If the customer trouble report exceeds 3.0% (three per 100 access lines) for a large exchange or 6.0% (six per 100 access lines) for a smaller exchange for three consecutive months, the DCTU shall provide a detailed corrective action plan for such exchange or wire center. For purposes of this section, a large exchange is defined as serving 10,000 or

more access lines and a small exchange is defined as serving less than 10,000 access lines.

(B) The DCTU that serves 10,000 or less access lines shall maintain its network service in a manner that it receives no more than six customer trouble reports on a company-wide basis, excluding customer premises equipment (CPE) reports, per 100 customer access lines per month (on average). Performance Benchmark Applicable for Corrective Action. If the customer trouble report exceeds 6.0% (six per 100 access lines) per exchange for three consecutive months, the DCTU shall provide a detailed corrective action plan for such exchange or wire center.

(C) The DCTU shall provide to the customer a commitment time by which the trouble will be cleared. If a premises visit is required, the DCTU shall schedule an appointment period with the customer for the morning or afternoon, not to exceed a four-hour time period. When the DCTU cannot keep an appointment, the DCTU shall attempt to notify the customer by a telephone call and schedule a new appointment. If unable to gain access to the customer's premises during the scheduled appointment period, the DCTU representative shall leave a notice at the premises advising the customer how to reschedule the work.

(D) At least 90% of out-of-service trouble reports on service provided by a DCTU shall be cleared within eight working hours, except where access to the customer's premises is required but not available or where interruptions are caused by unavoidable casualties and acts of God affecting large groups of customers. Performance Benchmark Applicable for Corrective Action: If the performance is below 90% in any exchange area for a period of three consecutive months, the DCTU shall provide a detailed corrective action plan for such exchange or wire center.

(E) Each DCTU shall establish procedures to insure the prompt investigation and correction of trouble reports so that the percentage of repeated trouble reports on residence and single line business lines does not exceed 22% of the total customer trouble reports on those lines. Performance Benchmark Applicable for Corrective Action: If repeat reports exceed 22% of the total customer trouble report in any exchange for three consecutive months, the DCTU shall provide a detailed corrective action plan for such exchange or wire center.

(7) **Transmission requirements.** All voice-grade trunk facilities shall conform to accepted transmission design factors and shall be maintained to meet the following objectives when measured from line terminals of the originating central office to the line terminals of the terminating central office. A periodic report for central offices or exchanges as requested by the commission staff shall be provided by the DCTU, in order to demonstrate compliance with the following objectives.

(A) Interoffice local exchange service calls. Excluding calls between central offices in the same building, 95% of the measurements on the network of a DCTU should have from two to ten decibels loss at 1000+20 hertz and no more than 30 decibels above reference noise level ("C" message weighting).

(B) Direct distance dialing. Ninety-five percent of the transmission measurements should have from three to 12 decibels loss at 1000+20 hertz and no more than 33 decibels above reference noise level ("C" message weighting).

(C) Subscriber lines. All newly constructed and rebuilt subscriber lines shall be designed for a transmission loss of no more than eight decibels from the serving central office to the customer premises network interface. All subscriber lines shall be maintained so that transmission loss does not exceed ten decibels. Subscriber lines shall in addition be constructed and maintained so that metallic noise does not exceed 30 decibels above reference noise level ("C" message weighting) on 90% of the lines. Metallic noise shall

not exceed 35 decibels above reference noise level ("C" message weighting) on any subscriber line.

(D) PBX, key, and multiline trunk circuits. PBX, key, and multiline trunk circuits shall be designed and maintained so that transmission loss at the subscriber station does not exceed eight decibels. If the PBX or other terminating equipment is customer-owned and if transmission loss exceeds eight decibels the DCTU's responsibility shall be limited to providing a trunk circuit with no more than five decibels loss from the central office to the point of connection with customer facilities.

(E) Impulse Noise Limits. The requirements for impulse noise limits shall be as follows:

(i) For switching offices, the noise level count shall not exceed five pulses above the threshold in any continuous five minute period on 50% of test calls. The reference noise level threshold shall be less than: 54 dBrnC for Crossbar switch, 59 dBrnC for step-by-step switch, and 47 dBrnC for electronic or digital switch.

(ii) For trunks, the noise level count shall not exceed five pulses above the threshold in any continuous five minute period on 50% of trunks in a group. The reference noise level threshold shall be less than 54 dBrnCO for voice frequency trunks, and 62 dBrnCO for digital trunks.

(iii) For loop facilities, the noise level count shall not exceed 15 pulses above the threshold in any continuous 15 minute period on any loop. The reference noise level threshold shall be less than 59 dBrnC when measured at central office (CO), or referred to CO through 1004 Hz loss.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter C. INFRASTRUCTURE AND RELIABILITY.

§26.55. Monitoring of Service.

Before any business telephone customer uses service observing equipment to monitor calls originated by or received at the business telephones for any reason, the customer must agree in writing to inform all employees that calls over the business telephones may be monitored.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter C. INFRASTRUCTURE AND RELIABILITY.

§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.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter D. RECORDS, REPORTS, AND OTHER REQUIRED INFORMATION

§26.71. General Procedures, Requirements and Penalties.

(a) **Who shall file.** The record keeping, reporting, and filing requirements listed in this subchapter shall apply to all public utilities operating in the State of Texas, excluding municipally owned utilities, unless otherwise specified. Unless otherwise specified in this subchapter the term "public utility" or "utility," insofar as it relates to telecommunications utilities, shall refer to dominant carriers. Moreover, the provisions of this subchapter are applicable to all services provided by such carriers.

(b) **Initial reporting.** Unless otherwise specified in a section of this subchapter, periodic reporting shall commence as follows:

(1) **Quarterly reporting.** For all public utilities and other persons required to file records, reports and other required information under this chapter, who are not already filing quarterly with the commission as of the effective date of this section, reporting shall begin with an initial filing for the first fiscal quarter for which information is available.

(2) **Annual Reporting.** For all public utilities and other persons required to file records, reports and other required information under this chapter, who are not already filing annually with the commission as of the effective date of this section, reporting shall begin with an initial filing for the most recent fiscal year ending on or prior to April 30 of the first year the record, report or other required information must be filed with the commission.

(c) **Maintenance and location of records.** All records, books, accounts, or memoranda required of a public utility, as defined in the Public Utility Regulatory Act, §51.002(8) may be kept outside the State of Texas so long as those records, books, accounts, or memoranda are returned to the state for any inspection by the commission that is authorized by the Public Utility Regulatory Act.

(d) **Report attestation.** All reports submitted to the commission shall be attested to by an officer or manager of the utility under whose direction the report is prepared, or if under trust or receivership, by the receiver or a duly authorized person, or if not incorporated, by the proprietor, manager, superintendent, or other official in responsible charge of the utility's operation.

(e) **Information omitted from reports.** The commission may waive the reporting of any information required in the sections of this subchapter if it determines that it is either impractical or unduly burdensome on any utility to furnish the requested information. If any such information is omitted by permission of the commission, a written explanation of the omission must be stated in the report.

(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) **Monthly reports**: 45 days after the end of the reported period.

(2) **Quarterly reports other than shareholder reports**: 45 days after the end of the reported period.

(3) **Annual earnings report**: May 15 of each year.

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

(5) 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.

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

(g) **Special and additional reports.** Each utility, including municipally owned utilities, shall report on forms prescribed by the commission special and additional information as requested which relates to the operation of the business of the utility.

(h) **Penalty for refusal to file on time.** In addition to penalties prescribed by law, and §22.246 of the title (relating to Administrative Penalties) the commission may disallow for rate making purposes the costs related to the activities for which information was requested and not timely filed.

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Subchapter D. RECORDS, REPORTS, AND OTHER REQUIRED INFORMATION

§26.72. Uniform System of Accounts.

(a) In this section the term "utility," insofar as it relates to telecommunications utilities, shall refer to dominant carriers. Moreover, the provisions of this section are applicable to all services provided by such carriers. Every utility shall keep uniform accounts as prescribed by the commission of all business transacted. The classification of utilities, index of accounts, definitions, and general instructions pertaining to each uniform system of accounts as amended from time to time shall be adhered to at all times, unless provided otherwise by these rules, or specifically permitted by the commission.

(b) **Classification**. For the purposes of accounting and reporting to the commission, each public utility shall be classified as follows:
- (1) **Class A**: utilities with annual regulated operating revenues exceeding $100 million.
- (2) **Class B**: utilities with annual regulated operating revenues less than $100 million.

(c) **System of accounts.** For the purpose of accounting and reporting to the commission, each public utility shall maintain its books and records in accordance with the following prescribed uniform system of accounts:
- (1) **Class A**: uniform system of accounts as adopted and amended by the Federal Communications Commission for Class A utilities or other commission-approved system of accounts as will be adequately informative for all regulatory purposes.
- (2) **Class B**: uniform system of accounts as adopted and amended by the Federal Communications Commission for Class B utilities or other commission-approved system of accounts as will be adequately informative for all regulatory purposes.

(d) **Other system of accounts.** When a utility has adopted a uniform system of accounts as may be required by a state or federal agency other than those previously mentioned in this section (e.g. United States Department of Agriculture - Rural Utilities Service), that system of accounts may be adopted by the utility after notification to the commission.

(e) **Merchandise accounting.** Each utility shall keep separate accounts to show all revenues and expenses resulting from the sale or lease of appliances, fixtures, equipment, directory advertising, or other merchandise.

(f) **Accounting period**. Each utility shall keep its books on a monthly basis so that for each month all transactions applicable thereto shall be entered in the books of the utility.

(g) **Rules related to capitalization of construction costs**. Each public utility shall accrue interest during construction on both short-term (on an off-book basis, if necessary) and long-term telephone plant under construction to the extent not included in rate base. In the event construction work in progress is included in rate base pursuant to the rules in subsection §23.21(c)(2)(D) of this title (relating to Cost of Service), interest during construction for public utilities shall be discontinued to the extent construction work in progress or telephone plant under construction is allowed.

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Subchapter D. RECORDS, REPORTS, AND OTHER REQUIRED INFORMATION

§26.73. Annual Earnings Report.

(a) Each utility shall file with the commission, on commission-prescribed forms available on the commission's website, an earnings report providing the information required to enable the commission to properly monitor public utilities within the state. A deregulated or transitioning company is not required to file an earnings report with the commission unless the company is receiving support from the Texas High Cost Universal Service Plan.

(1) Each utility shall report information related to the most recent calendar year as specified in the instructions to the report.

(2) Each utility shall file three copies of the commission-prescribed earnings report and shall electronically transmit one copy of the report no later than May 15th of each year.

(3) A utility with a rate proceeding pending before the commission on the due date of the annual earnings report, pursuant to the Public Utility Regulatory Act (PURA), Chapter 53, in which a rate filing package is required, or who had a final order issued in such a proceeding within the previous 12 months, is exempt from filing the report.

(b) In addition to the utilities required to file under subsection (a) of this section, a telecommunications provider shall file with the commission the provider's annual earnings report if the provider:

(1) Is not a local exchange company subject to a total support reduction plan under §26.403 of this title (relating to the Texas High Cost Universal Service Plan) or that has made an election under PURA §56.023(l);

(2) Serves greater than 31,000 access lines; and

(3) Receives support under a plan established under PURA §56.021(1).

(c) A report filed under this section is confidential and not subject to disclosure under the Texas Government Code, Public Information Act, Chapter 552.

§26.74. Reports on Sale of Property and Mergers.

(a) Except for a local exchange company exempted in subsection (e) of this section a dominant carrier shall not sell, acquire, lease or rent any plant as an operating unit or system in the State of Texas for a total consideration in excess of $10 million unless the public utility reports such transaction to the commission while pending or within 30 days after closing.

(b) Except for a local exchange company exempted in subsection (e) of this section a dominant carrier shall not merge or consolidate with another public utility or electric utility operating in the State of Texas unless the public utility reports such transaction to the commission while pending or within 30 days after closing.

(c) Dominant carriers shall not purchase voting stock in another public utility or electric utility doing business in the State of Texas, unless the utility reports such purchase to the commission while pending or within 30 days after closing.

(d) Dominant carriers shall not loan money, stocks, bonds, notes or other evidences of indebtedness to any corporation or person owning or holding directly or indirectly any stock of the public utility unless the public utility reports such transaction to the commission while pending or within 30 days after closing.

(e) Incumbent local exchange companies electing under the Public Utility Regulatory Act, Chapter 58, are exempt from the requirements of subsections (a) and (b) of this section.

(f) For dominant carriers, investigations by the commission, with or without public hearing, of the transactions described in subsection (a) and (b) of this section must be completed within 180 days after the date of notification by the dominant carrier. If an order is not entered within that time, the utility's action is considered consistent with the public interest.

§26.75. Reports on Sale of 50% or More of Stock.

(a) All transactions involving the sale of 50% or more of the stock of a dominant carrier except a local exchange company exempted in subsection (b) of this section, shall be reported to the commission while pending or within 30 days after closing.

(b) Incumbent local exchange companies electing under the Public Utility Regulatory Act, Chapter 58, are exempt from the requirements of this subsection.

(c) For dominant carriers, investigations by the commission, with or without public hearing, of the transactions described in this section must be completed within 180 days after the date of notification by the dominant carrier. If an order is not entered within that time, the utility's action is considered consistent with the public interest.

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Subchapter D. RECORDS, REPORTS, AND OTHER REQUIRED INFORMATION

§26.76. Gross Receipts Assessment Report.

All telecommunications utilities subject to the jurisdiction of the commission shall file a gross receipts assessment report with the state comptroller reflecting those gross receipts subject to the assessment as required by the Public Utility Regulatory Act on a form prescribed by the state comptroller. These reports shall be required on an annual basis for those companies that have elected to remit their assessment annually and on a quarterly basis for those companies that have elected to remit their assessment quarterly. Such reports and assessments shall be remitted in accordance with the Public Utility Regulatory Act, Chapter 16, Subchapter A.

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Subchapter D. RECORDS, REPORTS, AND OTHER REQUIRED INFORMATION

§26.78. State Agency Utility Account Information.

(a) **Application.** The requirements of this section shall apply to each certificated telecommunications utility.

(b) In this section "state agency" shall have the following meaning:
- (1) any board, commission, department, office, or other agency in the executive branch of state government that is created by the constitution or a statute of the state;
- (2) an institution of higher education as defined by the Education Code §61.003, other than a public junior college;
- (3) the legislature or a legislative agency; or
- (4) the Supreme Court of Texas, the Court of Criminal Appeals of Texas, a court of civil appeals, a state judicial agency, or the State Bar of Texas.

(c) A utility shall provide the information required in subsections (e) of this section for each state agency account in the prescribed form and medium. The utility shall obtain from the General Services Commission or its designee a copy of the field layouts and electronic format that the utility shall use. The General Services Commission or its designee shall notify the utility of any changes to the field layouts and electronic format with sufficient time for the utility to submit the information required by this subsection in a timely manner. Such form and medium must make the reports easy to compile and analyze in a manner which is not unreasonably costly, and to the extent possible, the General Services Commission or its designee will accommodate the utilities' electronic formats.

(d) A utility shall retain all billing records for each state agency account for at least four years from the billing date, notwithstanding any other commission rule relating to the retention of billing records that may provide for a shorter retention period.

(e) Each certificated telecommunications utility in its capacity as local service provider shall:
- (1) each year file the information for each state agency account required by this subsection within 45 days after the end of the reporting period for the six months ending with the February billing period and for the six months ending with the August billing period.
- (2) provide in the prescribed form the following information for each state agency account:
  - (A) Utility Name: name of the utility providing service;
  - (B) Account Name: name of the state agency receiving service from the utility;
  - (C) Agency Code Number, if available, or Account Number, if the agency code number is not available, or Telephone Number, if the account number is not available;
  - (D) Account Address: the address of the facility being served by the utility;
  - (E) Service Code: identifying code for each service or product provided (for example, Universal Service Order Code);
  - (F) Service Description: each service code should have a separate description;
  - (G) Quantity: the number of units of each product or service purchased;
  - (H) Unit Rate: the rate charged for each unit of each service or product listed; and
  - (I) Total Price: the total amount charged for each service or product listed; and
- (3) provide the information required by this subsection to the General Services Commission or its designee by electronic transfer, if feasible, or, otherwise, by diskette. Only in cases of extreme undue hardship will it be permissible for a utility to provide the information in paper documents.

(f) Information provided pursuant to this subsection shall be subject to any protections of the Texas Government Code, Public Information Act, Chapter 552. Any request for information required by this section shall be filed with the Office of the Attorney General or its designee.

(g) The commission, utilities, and the Office of the Attorney General's designee, as well as representatives of interested state agencies, shall continue to evaluate the effectiveness and efficiency of the public monitoring and verification system for state agency customers provided in this section.

(h) A utility shall make a good faith effort to provide all the information required by this section. It is a violation of this section for any information to be omitted from the report unless a good faith reason exists for less than full compliance. Examples of good faith reasons for not providing a complete report include: technical limitations that cannot be corrected without undue expense, unavailability of the particular information on a utility's billing system or database, information that cannot reasonably be made available in the form requested, waiver by commission order, or written waiver by the Office of the Attorney General or his or her designee. Unless otherwise challenged in a complaint proceeding by the Office of the Attorney General as set forth herein, a utility is presumed to have made a good faith effort to provide the required information and is not required to seek any type of advance waiver. In the event a utility does not provide a complete report, the Office of the Attorney General may file a complaint with the commission. In any such complaint proceeding, the utility shall have the burden of showing the omission was in good faith.

§26.79. Equal Opportunity Reports.

(a) This section does not apply to a deregulated company that holds a certificate of operating authority or to an exempt carrier under Public Utility Regulatory Act (PURA) §52.154.

(b) The term "minority group members," when used within this section, shall include only members of the following groups:
(1) African-Americans;
(2) American Indians;
(3) Asian-Americans;
(4) Hispanic-Americans and other Americans of Hispanic origin; and
(5) women.

(c) Each utility that files any form with local, state or federal governmental agencies relating to equal employment opportunities for minority group members, (e.g., EEOC Form EEO-1, FCC Form 395, RUS Form 268, etc.) shall file copies of such completed form with the commission. If such form submitted by a multi-jurisdictional utility does not indicate Texas-specific numbers, the utility shall also prepare, and file with the commission, a form indicating Texas-specific numbers, in the same format and based on the numbers contained in the form previously filed with local, state or federal governmental agencies. Each utility shall also file copies of any other forms required to be filed with local, state or federal governmental agencies which contain the same or similar information, such as personnel data identifying numbers and occupations of minority group members employed by the utility, and employment goals relating to them, if any.

(d) Any additional information relating to the matters described in this section may be submitted at the utility's option.

(e) Any utility filing with the commission any documents described in subsections (c) and (d) of this section shall file four copies of such documents with the commission's filing clerk under the project number assigned by the Public Utility Commission's Central Records Office for that year's filings. Utilities shall obtain the project number by contacting Central Records.

(f) A utility that files a report with local, state or federal governmental agencies and that is required by this section to file such report with the commission must file the report by December 30 of the year it is filed with the local, state or federal agencies.

(g) A utility that files a report pursuant to §26.85(f)(1) of this title (relating to Report of Workforce Diversity and Other Business Practices) satisfies the requirements of subsection (c) of this section.

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§26.80. Annual Report on Historically Underutilized Businesses.

(a) This section does not apply to a deregulated company that holds a certificate of operating authority or to an exempt carrier under Public Utility Regulatory Act (PURA) §52.154.

(b) In this section, "historically underutilized business" has the same meaning as in Texas Government Code, §481.191, as it may be amended.

(c) Every utility shall report its use of historically underutilized businesses (HUBs) to the commission on a form approved by the commission. A utility may submit the report on paper, or on paper and on a diskette (in Lotus 1-2-3 (*utility name.wk*) or Microsoft Excel (*utility name.xl*) format).

(1) Each small local exchange company and telephone cooperative utility shall on or before December 30 of each year submit to the commission a comprehensive annual report detailing its use of HUBs for the four quarters ending on September 30 of the year the report is filed, using the Small Utilities HUB Report form.

(2) Every utility other than those specified in paragraph (1) of this subsection, shall on or before December 30 of each year submit to the commission a comprehensive annual report detailing its use of HUBs for the four prior quarters ending on September 30 of the year the report is filed, using the Large Utilities HUB Report form.

(3) Each utility wishing to report indirect HUB procurements or HUB procurements made by a contractor of the utility may use the Supplemental HUB report form.

(4) Each utility shall submit a text description of how it determined which of its vendors is a HUB.

(5) Each utility that has more than 1,000 customers in a state other than Texas, or that purchases more than 10% of its goods and services from vendors not located in Texas, shall separately report by total and category all utility purchases, all utility purchases from Texas vendors, and all utility purchases from Texas HUB vendors. A vendor is considered a Texas vendor if its physical location is situated within the boundaries of Texas.

(6) Each utility shall also file any other documents it believes appropriate to convey an accurate impression of its use of HUBs.

(d) This section may not be used to discriminate against any citizen on the basis of race, nationality, color, religion, sex, or marital status.

(e) This section does not create a new cause of action, either public or private.

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§26.81. Service Quality Reports.

Service quality reports shall be submitted quarterly on a form prescribed by the commission.

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Subchapter D. RECORDS, REPORTS, AND OTHER REQUIRED INFORMATION

§26.85. Report of Workforce Diversity and Other Business Practices.

(a) **Purpose.** This section establishes annual reporting requirements for telecommunications utilities to report its progress and efforts to improve workforce diversity and contracting opportunities for small and historically underutilized businesses from its five-year plan filed pursuant to the Public Utility Regulatory Act (PURA) §52.256(b).

(b) **Application.** This section applies to all telecommunications utilities, as defined in PURA §51.002(11), doing business in the State of Texas. This section does not apply to a deregulated company that holds a certificate of operating authority or to an exempt carrier under PURA §52.154.

(c) **Terminology.** In this section, "small business" and "historically underutilized business" have the meanings assigned by the Texas Government Code §481.191.

(d) **Annual progress report of workforce and supplier contracting diversity.** An "Annual Progress Report on Five-Year Plan to Enhance Supplier and Workforce Diversity" shall be filed annually with the commission. The report shall be filed on or before December 30 of each year for the four prior quarters ending on September 30 of the year the report is filed. A telecommunications utility that was not operational on January 1, 2000, and is required to file pursuant to PURA §52.256(b), shall file a plan in Project Number 21170 by December 30 of the year in which an annual report is due under this subsection.

(e) **Filing requirements.** Four copies of the Annual Progress Report on Five-Year Plan to Enhance Supplier and Workforce Diversity shall be filed with the commission's filing clerk under the project number assigned by the Public Utility Commission's Central Records Office for that year's filings. Telecommunications utilities shall obtain the project number by contacting Central Records. A copy of the report shall also be sent to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and the African-American and Hispanic Caucus offices of the Texas Legislature.

(f) **Contents of the report.** The annual report filed with the commission pursuant to this section may be filed using the Workforce and Supplier Contracting Diversity form or an alternative format and shall contain at a minimum the following information:

(1) An illustration of the diversity of the telecommunications utility's workforce in the State of Texas at the time of the report. If the telecommunications utility is required to file an Equal Opportunity Report pursuant to §26.79 of this title (relating to Equal Opportunity Reports), a copy of that document may be attached to this report to satisfy the requirements of this paragraph.

(2) A description of the specific progress made under the workforce diversity plan filed pursuant to PURA §52.256(b), including:

(A) the specific initiatives, programs, and activities undertaken during the preceding year; and

(B) an assessment of the success of each of those initiatives, programs, and activities.

(3) An explanation of the telecommunications utility's level of contracting with small and historically underutilized businesses in the State of Texas.

(4) The extent to which the telecommunications utility has carried out its initiatives to facilitate opportunities for contracts or joint ventures with small and historically underutilized businesses.

(5) A description of the initiatives, programs, and activities the telecommunications utility will pursue during the next year to increase the diversity of its workforce and contracting opportunities for small and historically underutilized businesses in the State of Texas.

(g) This section may not be used to discriminate against any citizen on the basis of race, nationality, color, religion, sex, or marital status.

(h) This section does not create a new cause of action, either public or private.

(i) **Waiver**. A telecommunications utility that has less than sixteen employees in the State of Texas satisfies the requirements of this rule by completing subsection (f)(1) of this section.

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§26.87. Infrastructure Reports.

Each incumbent local exchange company (LEC) that elects incentive regulation under the Public Utility Regulatory Act (PURA), Chapters 58 or 59 shall file an infrastructure report with the commission each year on the anniversary date of its election. One copy of the report must be filed as a hard copy and one copy must be filed in an electronic format. The report must include sufficient information to ensure compliance with the requirements of PURA §58.053, Chapter 58, Subchapters F and G, and Chapter 59, Subchapters C and D. At a minimum, the report must include the following information:

(1) **End-to-end digital connectivity.**

(A) Percent and total number of access lines that have end-to-end digital connectivity available. Also, total number of lines that were upgraded to end-to-end digital connectivity during the previous year and cumulative for the period since election. This information shall be provided for each wire center or central office, identified by name and Common Language Location Identification (CLLI) Code, and by class of customers (such as residential and business).

(B) The associated investment and expense for the previous year and cumulative for the period since election.

(C) The total number of equipped and active voice channels, number of channels on fiber optics, and number of channels on copper facilities. This information shall be provided for each wire center or central office, identified by name and CLLI Code.

(2) **New digital switch deployment.**

(A) Percent and total number of local exchange access lines served by digital switching facilities. Also, total number of lines that were served by new digital switching equipment during the previous year and cumulative for the period since election. This information shall be provided for each wire center or central office, identified by name and CLLI Code.

(B) Percent and total number of central offices equipped with digital switching facilities. Also, total number of central offices that were equipped with new digital switching equipment during the previous year and cumulative for the period since election. This information shall be provided for each wire center or central office, identified by name and CLLI Code.

(C) The associated investment and expense for the previous year and cumulative for the period since election.

(D) The type, make, and quantity of switching equipment installed during the previous year. This information shall be provided for each wire center or central office, identified by name and CLLI Code. Also include actual installation and service dates of the switch along with a brief description of its functionalities and capabilities.

(3) **Inter-office broadband facilities** (capable of transmitting at least 45 megabits per second of digital information).

(A) Percent and total number of inter-office facilities that use broadband facilities. Also, total number of inter-office facilities that were upgraded for broadband capability during the previous year and cumulative for the period since election.

(B) Include schematic diagrams that indicate quantity (such as fiber sheath miles, and number of strands, number of DS-3 channels or optical channels, etc.) and relative location for each such facility, for the previous year. Also include installation and service dates for such facilities.

(C) The associated investment and expense data for such facilities, for the previous year and cumulative for the period since election.

(4) **Common channel signaling system (SS-7) deployment.**

(A) Percent and total number of central offices equipped with SS-7 capability. Also, total number of central offices that were equipped with SS-7 capability during the previous year and cumulative for the period since election. This information shall be provided for each wire center or central office, identified by name and CLLI Code. Also include actual installation and service dates of SS-7 capability along with a brief description of its functionalities.

(B) The associated investment and expense data for such facilities, for the previous year and cumulative for the period since election.

(5) **Fiber optic facilities to tandem central offices.**

(A) Percent and number of serving central offices that have optical fiber facilities to their connecting tandem offices. Also, total number of serving central offices that were upgraded with fiber optic facilities to their respective tandem switching office during the previous year and cumulative for the period since election.

(B) Include schematic diagrams that indicate quantity (such as fiber sheath miles, and number of strands, or number of DS-3 channels or optical channels etc.) and relative location of each such facility, for the previous year. Also include installation and service dates for those facilities.

(C) The associated investment and expense data, for the previous year and cumulative for the period since election.

(6) **Infrastructure commitment to certain entities.**

(A) Identify each entity, by name and type, that requests services provided under PURA, Chapter 58, Subchapter G or Chapter 59, Subchapters C and D, as applicable. Include the address and telephone number for each entity served.

(B) For each entity identified in subparagraph (A) of this paragraph, list the date of each request and the actual installation and service dates. Also list the type of service(s) requested and actually provided, including quantity and location. Provide information that describes the functionalities and application of each type of service provided.

(C) For each service provided to an entity under PURA, Chapter 58, Subchapter G or Chapter 59, Subchapters C and D, except for point-to-point intraLATA 1.544 megabits per second service offered at a flat monthly tariff rate under PURA §58.259, a customer specific contract shall be filed with the commission within 30 days of the execution of the contract. Information under this subparagraph need not be included in the annual report required by this subsection, although the annual report should refer the reader to this filing for specific data.

(7) **A listing of exchanges with no digital presence as of September 1, 1995**. Also, state which exchanges have been upgraded with digital service and the date put in service. The information required by this paragraph shall be provided in an electing company's initial report under this subsection and is not required to be provided in subsequent reports.

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§26.89. Nondominant Carriers' Obligations Regarding Information on Rates and Services.

(a) All nondominant carriers, including those holding a certificate of operating authority or a service provider certificate of operating authority, may, but are not required to file the information set forth in paragraphs (1) - (3) of this subsection. This information shall be updated and kept current at all times.
- (1) A description of the type(s) of communications service provided;
- (2) For each service listed in response to paragraph (1) of this subsection, the locations in the state (by city) in which service is originated and/or terminated. If service is provided statewide, either origination or termination, the carrier shall so state; and
- (3) A tariff, schedule or list showing all recurring and nonrecurring rates for each service provided.

(b) By June 30 of each year, each nondominant carrier that during the previous 12 months has not filed changes to the information filed pursuant to subsection (a) of this section shall file with the commission a letter informing the commission that no changes have occurred. An uncertificated nondominant carrier failing to file either this letter or the updates pursuant to subsection (a) of this section during the 12-month period ending June 30 may no longer be considered to be registered with the commission.

(c) All nondominant carriers shall comply with the registration requirements in §26.107 of this title (relating to Registration of Interexchange Carriers (IXCs), Prepaid Calling Services Companies (PPC), and Other Nondominant Telecommunications Carriers).

(d) A nondominant carrier:
- (1) may, but is not required to maintain on file with the commission tariffs, price lists, or customer service agreements governing the terms of providing service;
- (2) may cross-reference its federal tariff in its state tariff if its intrastate switched access rates are the same as its interstate switched access rate;
- (3) may withdraw a tariff, price list, or customer service agreement not required to be filed or maintained with the commission under this section if it:
  - (A) files written notice of the withdrawal with the commission; and
  - (B) notifies its customers of the withdrawal and posts the current tariffs, price lists, or generic customer service agreements on its Internet website.
- (4) is not required to obtain advance approval for a filing with the commission or a posting on the nondominant carrier's Internet website that adds, modifies, withdraws, or grandfathers a retail service or the service's rates, terms, or conditions;
- (5) is not subject to any rule or regulatory practice that is not imposed on:
  - (A) a holder of a certificate of convenience and necessity serving the same area; or
  - (B) a deregulated company that:
    - (i) has 500,000 or more access lines in service at the time it becomes a deregulated company; or
    - (ii) serves an area also served by the nondominant telecommunications utility.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter E. CERTIFICATION, LICENSING AND REGISTRATION.

§26.101. Certificate of Convenience and Necessity Criteria.

(a) **Scope and Purpose.** The commission may grant a certificate of convenience and necessity (CCN) to provide local exchange telephone service, basic local telecommunications service or switched access service pursuant to Public Utility Regulatory Act (PURA), Chapter 54, Subchapter B.

(b) **Certificates of Convenience and Necessity for new service areas and facilities.**

(1) The commission may issue a CCN only if it finds that the CCN is necessary for the service, accommodation, convenience, or safety of the public and complies with the requirements in PURA §54.054 (relating to Grant or Denial of Certificate).

(2) The commission may grant a CCN as requested, refuse to grant it, or grant it for the construction of a portion of the requested system, facility, or extension, or for the partial exercise of the requested right or privilege.

(c) **Non-exclusivity of CCN.** A CCN granted under this section shall not be construed to vest exclusive service or property rights in the area certificated. The commission may grant additional certification to another utility or utilities for all or any part of the area certificated under this section, upon a finding of public convenience and necessity.

(d) **Name on Certification.** All local exchange telephone service, basic local telecommunications service, and switched access service provided under a CCN shall be provided in the names or assumed names under which certification is granted by the commission.

(1) The applicant must provide the following information from its registration with the Texas Secretary of State or from its corporate registration in another state or county, as applicable:

(A) Form of business being registered (*e.g.*, corporation, limited liability company, partnership, sole proprietorship, etc.);

(B) Any assumed names;

(C) Certification/file number; and

(D) Date business was registered.

(2) The requested certificate names shall not be deceptive, misleading, vague, inappropriate, confusing or duplicative of an existing Certificated Telecommunications Utility (CTU).

(3) Any name in which the applicant proposes to do business will be reviewed for compliance with paragraph (2) of this subsection. If the presiding officer determines that any requested name does not meet the requirements of paragraph (2) of this subsection, the presiding officer shall notify the applicant that the requested name may not be used by the applicant. The applicant will be required to amend its application to provide at least one suitable name in order to be certificated.

(e) **Amending a CCN.** The commission may amend any certificate issued under this section if it finds that the public convenience and necessity requires such amendment.

(1) Pursuant to PURA Chapter 54 Subchapter B, CCNs holders must amend their certificates for:

(A) A change in the name of the holder of the CCN, including a change of the corporate name or assumed name of the certificate holder.

(B) A change in the boundary of a service area.

(C) CCNs for Non-Chapter 58 utilities are not transferable without approval of the commission and continue in force except as ordered by the commission. The CCN amendment must be filed jointly by the utilities involved and comply with the requirements set forth in PURA §14.101 and §51.010 (relating to Report of Certain Transactions; Commission Consideration and Commission Investigation of Sale, Merger, or Certain Other Actions).

(2) Minor service area boundary amendment applications are applications that involve less than 5% of the customers of an exchange. An application for an amendment for a minor service area boundary change must be jointly filed by the affected CCN holders and, at a minimum, contain the following information:

(A) Legal name and all assumed names under which the applicant conducts its business;

(B) Business office address, primary telephone number, fax number, website address and primary email address;

(C) Business regulatory contact(s), including business address, primary phone number and primary email address;

(D) Reason(s) for the proposed amendment;

(E) Clear and concise written description of the geographic location of the proposed amendment;

(F) Maps (minimum size of 8 1/2" x 11") of the proposed amendment identifying the existing and proposed boundaries clearly and conspicuously. At a minimum, the applicant must provide a county map and expanded view(s) that clearly and conspicuously identifies the boundary change. Each map must clearly and conspicuously illustrate the location of the area for which the amendment is being requested, including but not limited to, geographic landmarks, municipal and county boundary lines, streets, roads, highways, railroad tracks, and any other readily identifiable points of reference, unless no such references exist for the geographic area. The maps of the proposed amendment must be submitted in hard copy and, upon request by Staff, in compatible electronic format; and

(G) Notice of the proceeding and notice to customers. Customers being transferred from one utility to another shall be given notice in accordance with §26.130(k) of this title (relating to Selection of Telecommunications Utilities).

(f) **Sale, transfer, merger.** A notice must be filed for the sale, transfer, or merger (STM) of at least 50% of the utility, or sale, acquisition or lease of facilities as an operating unit or system for a total consideration of more than $10 million.

(1) Chapter 58 electing utilities must file a written notification with the commission no later than 30 days after the STM has closed.

(2) Chapter 59 electing utilities must comply with the requirements set forth in PURA §14.101 and §51.010.

(g) **Reporting requirements.**

(1) **Contact Information.** Each CCN holder must maintain accurate contact information with the commission. At a minimum, the CCN holder is required to report a current regulatory contact person, complaint contact person, primary and secondary emergency contact, operation and policy migration contact, business physical address, primary business telephone number, toll-free customer service number, and primary email address. Additional information for tertiary emergency contact, separate mailing address, and additional company contact information is optional.

(A) After January 1st and before April 30th of each year, a CCN holder must electronically submit its current contact information to the commission, in the manner established by the commission.

(B) Contact information must be updated not later than the 30th day after the date of any change to the required information in paragraph (1) of this subsection, in the manner established by the commission.

(2) **Termination/Disconnection Notice.** CCN holders must file a copy of the termination/disconnection notice sent to certified telecommunications providers (CTP) within five

business days following the issuance of the notice. The service termination/disconnection notice must be filed in the project established for this purpose.

(3) **Bankruptcy Notification.** CCN holders that have filed a petition of bankruptcy must file a notice of bankruptcy in a project established for this purpose. The notice must be filed not later than the fifth business day after the filing of a bankruptcy petition. The notice of bankruptcy must include, at a minimum, the following information:

(A) The name of the certificated company filing for bankruptcy, date and state in which the bankruptcy proceeding was filed, type of bankruptcy (*e.g.*, Chapter 7, 11, 13), the bankruptcy case number; and

(B) The number of affected customers, the type of service being provided to the affected customers, and name of the provider(s) of last resort associated with the affected customers.

(4) **Required Reports.** A certificate holder shall file all reports required by PURA and other sections in this title, including but not limited to: §26.51 of this title (relating to Reliability of Operations of Telecommunications Providers); §26.73 of this title (relating to Annual Earnings Report); §26.76 of this title (relating to Gross Receipts Assessment Report); §26.80 of this title (relating to Annual Report on Historically Underutilized Businesses); §26.81 of this title (relating to Service Quality Reports), §26.85 of this title (relating to Report of Workforce Diversity and Other Business Practices); §26.465 of this title (relating to Methodology for Counting Access Lines and Reporting Requirements for Certified Telecommunications Providers); and §26.467 of this title (relating to Rates, Allocation, Compensation, Adjustments and Reporting).

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter E. CERTIFICATION, LICENSING AND REGISTRATION.

§26.102. Registration of Pay Telephone Service Providers (PTS).

(a) **Scope and Purpose.** This section applies to the registration of pay telephone service (PTS) providers pursuant to Public Utility Regulatory Act (PURA) Chapter 55, Subchapter H, §§55.171 - 55.180 (relating to Pay Telephones) and Chapter 26, Subchapter N, §§26.341 - 26.347 of this title (relating to Pay Telephone Services).

(b) **Registration Requirement.** All PTS providers (except CCN holders) must submit a PTS registration before providing pay telephone services in the State of Texas. If the PTS registration holder has any change to the information provided in the registration, then the PTS registration holder must update its registration information within 30 days of the change.

(c) **Re-registration.** PTS registrations expire on August 1st of each year. Each PTS provider must renew its registration with the commission by electronically submitting the required form in the manner established by the commission. A registration that is renewed during the period from January 1 to July 31 is extended one year. A registration that is not renewed is no longer valid.

(d) **Disclosure of location.** Registration requires disclosure of the location of each of the registrant's pay telephones by county. If a registrant asserts confidentiality of information related to the physical location of pay telephones, it must file this information in accordance with §22.71 of this title (relating to Filing of Pleadings, Documents, and Other Material).

(e) **Network access.** Certificated Telecommunications Utilities (CTUs) shall provide pay telephone access service (PTAS) to a PTS provider that provides its commission-issued PTS registration number to the CTU.

(f) **Revocation or suspension.** If the commission finds that a PTS provider is in violation of PURA, commission rules, or rules of the Federal Communications Commission, the commission may suspend or revoke the PTS registration and may direct all CTUs to discontinue provision of pay telephone access service to the PTS provider.

(g) **Reporting requirements.** Each PTS provider must maintain accurate contact information.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter E. CERTIFICATION, LICENSING AND REGISTRATION.

§26.107. Registration of Interexchange Carriers (IXCs), Prepaid Calling Services Companies (PPC), and Other Nondominant Telecommunications Carriers.

(a) **Scope and Purpose.** This section applies to the registration of telecommunications utilities (*i.e.*, providers of intralata and interlata long distance telecommunications services, prepaid calling services companies pursuant to §26.34 of this title (relating to Telephone Prepaid Calling Services), and other telecommunications services that do not require certification pursuant to the Public Utility Regulatory Act (PURA) Chapter 54, Subchapter C (relating to Certificate of Operating Authority); except as noted in PURA §51.002(10) (relating to Definitions)).

(b) **Registration Requirement.** Each telecommunications utility not holding a certificate of operating authority (COA) or service provider certificate of operating authority (SPCOA) shall file with the commission the information set forth in paragraphs (1) - (5) of this subsection no later than the 30th day after commencing service in the State of Texas. A registered telecommunications utility must report to the commission any changes to the information provided in its registration within 30 days of the change.

(1) **Registered Name.** A telecommunications utility may register in only one name:

(A) The applicant shall provide the date the requested name was accepted, the certification/file number assigned to the applicant and any assumed names registered with the Texas Secretary of State or the registration of assumed names in another state or county, as applicable.

(B) The requested name shall not be deceptive, misleading, vague, or duplicative of an existing certificated telecommunications utility (CTU) or other existing registrants.

(C) Commission staff will review any name in which the applicant proposes to do business. If staff determines that any requested name does not meet the requirements of subparagraph (B) of this paragraph, it shall notify the applicant that the requested name may not be used by the applicant. The applicant will be required to provide at least one suitable name in order to be registered.

(2) **Registration Number.** The commission will assign a PUC registration number to each new registrant upon completion of the registration process;

(3) **Contact Information.** Contact information must include, but not be limited to: business office information (contact's name, contact's title, business and mailing address, primary phone number, fax number and primary email address), complaint contact, regulatory contact, primary and secondary emergency contacts and a toll-free customer service number;

(4) **Federal Carrier Identification.** Registrant must provide the FCC Carrier Identification Code (CIC) or National Exchange Carriers Association (NECA) Operating Carrier Numbers (OCNs), if available; and

(5) **Telecommunications Affiliates.** Registrant must provide a list of all telecommunications affiliates that operate in Texas with a description of the relationship to the registrant, and an organizational chart, if available.

(c) **Re-Registration.** Registrations subject to this section expire on May 1st of each odd-numbered year. Each registrant subject to this section must re-register with the commission between January 1st and April 30th of each odd-numbered year by electronically submitting the required form in the manner established by the commission. A registration that is renewed during the period from January 1 to April 30 of an odd-numbered year is extended for another two years. A registration that is not renewed is no longer valid.

(d) **Amendments to Registration.**

(1) **Name change.** If a registrant proposes to change its name, it must file a written notification and provide at a minimum: its current registered name and registration number, the new registered name, and an explanation for the requested name change.

(2) **Cancellation of a Registration.** If a registrant proposes to cancel its registration it must file a written notification and provide at a minimum: its current registered name, registration number, and explanation of the requested cancellation. The explanation of the cancellation must include the disposition of all affected customers, whether notice was provided to customers, a copy of the notice provided to customers, whether any credits or deposits are outstanding, and the disposition of credits or deposits.

(e) **Required Reports.**

(1) Updates to contact information. All registrants subject to this section shall annually submit updated contact information in the manner established by the commission.

(2) All registrants subject to this section shall comply with the reporting requirements in PURA and other sections of this title, including but not limited to: §26.89 of this title (relating to Information Regarding Rates and Services of Nondominant Carriers).

(f) **Revocation or Suspension.** The commission may suspend or revoke the registration pursuant to PURA Chapter 17, if the commission finds that a registrant is in violation of PURA or commission rules.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.

Subchapter E. CERTIFICATION, LICENSING, AND REGISTRATION.

§26.111. Certificate of Operating Authority (COA) and Service Provider Certificate of Operating Authority (SPCOA) Criteria.

(a) **Scope and purpose.** This section applies to the certification of persons and entities to provide local exchange telephone service, basic local telecommunications service, and switched access service as holders of certificates of operating authority (COAs) and service provider certificates of operating authority (SPCOA) established in the Public Utility Regulatory Act (PURA), Chapter 54, Subchapters C and D.

(b) **Definitions.**

(1) Affiliate -- An affiliate of, or a person affiliated with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under the common control with, the person specified.

(2) Annual Report -- A report that includes but is not limited to the certificate holder's primary business telephone number, toll-free customer service number, email address, authorized company contact, regulatory contact, complaint contact, emergency contacts (primary and secondary) and migration contacts (operation and policy) which is submitted to the commission on an annual basis. Each provided contact shall include the contact's company title.

(3) Control -- The term control (including the terms controlling, controlled by and under common control with) means the power, either directly or indirectly through one or more affiliates, to direct or cause the direction of the management or policies of a person, whether through ownership of voting securities, by contract, or otherwise.

(4) Executive officer -- When used with reference to a person, means its president or chief executive officer, a vice-president serving as its chief financial officer, or a vice-president serving as its chief accounting officer, or any other officer of the person who performs any of the foregoing functions for the person.

(5) Facilities-based certification -- Certification that authorizes the certificate holder to provide service using its own equipment, unbundled network elements, or E9-1-1 database management associated with selective routing services.

(6) Permanent employee -- An individual that is fully integrated into the certificate holder's business. A consultant is not a permanent employee.

(7) Person -- Includes an individual and any business entity, including and without limitation, a limited liability company, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, but does not include a municipal corporation.

(8) Principal -- A person or member of a group of persons that controls the person in question.

(9) Shareholder -- The term shareholder means the legal or beneficial owner of any of the equity in any business entity, including without limitation and as the context and applicable business entity requires, stockholders of corporations, members of limited liability companies and partners of partnerships.

(c) **Ineligibility for certification.**

(1) An applicant is ineligible for a COA or SPCOA if the applicant is a municipality.

(2) An applicant is ineligible for a COA if the applicant has not created a proper separation of business operations between itself and an affiliated holder of a certificate of convenience and necessity as required by PURA §54.102 (relating to Application for Certificate).

(3) An applicant is ineligible for a SPCOA if the applicant, together with its affiliates, has more than 6.0% of the total intrastate switched access minutes of use as measured for the most recent 12-month period.

(4) The commission will not grant an SPCOA to a holder of a:
  (A) CCN for the same territory; or
  (B) COA for the same territory.

(d) **Application for COA or SPCOA certification.**
  (1) A person applying for COA or SPCOA certification must demonstrate its capability of complying with this section. A person who operates as a COA or SPCOA or who receives a certificate under this section shall maintain compliance with this section.
  (2) An application for certification shall be made on a form approved by the commission, verified by oath or affirmation, and signed by an executive officer of the applicant.
  (3) Except where good cause exists to extend the time for review, the presiding officer shall issue an order finding whether the application is deficient or complete within 20 days of filing. Deficient applications, including those without necessary supporting documentation, will be rejected without prejudice to the applicant's right to reapply.
  (4) While an application for a certificate or certification amendment is pending, an applicant shall inform the commission of any material change in the information provided in the application within five working days of any such change.
  (5) Except where good cause exists to extend the time for review, the commission will enter an order approving, rejecting, or approving with modifications, a new or amendment application within 60 days of the filing of the application.
  (6) While an application for COA or SPCOA certification or certification amendment is pending, an applicant shall respond to a request for information from commission staff within ten days after receipt of the request by the applicant.

(e) **Standards for granting certification to COA and SPCOA applicants.** The commission may grant a COA or SPCOA to an applicant that demonstrates that it is eligible under subsection (c) of this section, has the technical and financial qualifications specified in this section, has the ability to meet the commission's quality of service requirements to the extent required by PURA and this title, and it and its executive officers and principals do not have a history of violations of rules or misconduct such that granting the application would be inconsistent with the public interest. In determining whether to grant a certificate, the commission shall consider whether the applicant satisfactorily provided all of the information required in the application for a COA or SPCOA.

(f) **Financial requirements.** To obtain COA or SPCOA certification, an applicant must demonstrate the shareholders' equity required by this subsection.
  (1) To obtain facilities-based certification, an applicant must demonstrate shareholders' equity of not less than $100,000. To obtain resale-only or data-only certification, an applicant must demonstrate shareholders' equity of not less than $25,000.
  (2) For the period beginning on the date of certification and ending one year after the date of certification, the certificate holder shall not make any distribution or other payment to any shareholders or affiliates if, after giving effect to the distribution or other payment, the shareholders' equity of the certificate holder is less than the amount required by this paragraph. The restriction on distributions or other payments contained in this paragraph includes, but is not limited to, dividend distributions, redemptions and repurchases of equity securities, or loans or loan repayments to shareholders or affiliates.
  (3) Shareholders' equity shall be documented by an audited or unaudited balance sheet for the applicant's most recent quarter. The audited balance sheet shall include the independent auditor's report. The unaudited balance sheet shall include a sworn statement from an executive officer of the applicant attesting to the accuracy, in all material respects, of the information provided in the unaudited balance sheet.

(g) **Technical and managerial requirements.** To obtain COA or SPCOA certification, an applicant must have and maintain the technical and managerial resources and ability to provide continuous and reliable service in accordance with PURA, commission rules, and other applicable laws.

(1) To obtain facilities-based certification, an applicant must have principals, consultants or permanent employees in managerial positions whose combined experience in the telecommunications industry equals or exceeds five years. To obtain resale-only or data-only certification, an applicant must have principals or permanent employees in managerial positions whose combined experience in the telecommunications industry equals or exceeds one year.

(2) To support technical qualification, applicants must provide the following documentation: the name, title, number of years of telecommunications or related experience, and a description of the experience for each principal, consultant and/or permanent employee that the applicant will rely upon to demonstrate the experience required by paragraph (1) of this subsection.

(3) An applicant shall include the following in its initial application for COA or SPCOA certification:

(A) Any complaint history, disciplinary record and compliance record during the 60 months immediately preceding the filing of the application regarding: the applicant; the applicant's affiliates that provide utility-like services such as telecommunications, electric, gas, water, or cable service; the applicant's principals; and any person that merged with any of the preceding persons;

(i) The complaint history, disciplinary record, and compliance record shall include information from any federal agency including the U.S. Securities and Exchange Commission; any self-regulatory organization relating to the sales of securities, financial instruments, or other financial transactions; state public utility commissions, state attorney general officers, or other regulatory agencies in states where the applicant is doing business or has conducted business in the past including state securities boards or commissions, the Texas Secretary of State, Texas Comptroller's Office, and Office of the Texas Attorney General. Relevant information shall include the type of complaint, status of complaint, resolution of complaint, and the number of customers in each state where complaints occurred.

(ii) The applicant may request to limit the inclusion of this information if it would be unduly burdensome to provide, so long as the information provided is adequate for the commission to assess the applicant's and the applicant's principals' and affiliates' complaint history, disciplinary record, and compliance record.

(iii) The commission may also consider any complaint information on file at the commission.

(B) A summary of any history of insolvency, bankruptcy, dissolution, merger, or acquisition of the applicant or any predecessors in interest during the 60 months immediately preceding the application;

(C) A statement indicating whether the applicant or the applicant's principals are currently under investigation or have been penalized by an attorney general or any state or federal regulatory agency for violation of any deceptive trade or consumer protection laws or regulations; and

(D) Disclosure of whether the applicant or applicant's principals have been convicted or found liable for fraud, theft, larceny, deceit, or violations of any securities laws, customer protection laws, or deceptive trade laws in any state.

(4) Quality of service and customer protection.

(A) The applicant must affirm that it will meet the commission's applicable quality-of-service standards as listed on the quality of service questionnaire contained in the application. The quality-of-service standards include E9-1-1 compliance and local number portability capability. Data-only providers are not subject to the requirements for E9-1-1 and local number portability compliance as applicable to switched voice services.

(B) The applicant must affirm that it is aware of and will comply with the applicable customer protection rules and disclosure requirements as set forth in Chapter 26, Subchapter B, of this title (relating to Customer Service and Protection).

(5) Limited scope of COAs and SPCOAs. If, after considering the factors in this subsection, the commission finds it to be in the public interest to do so, the commission may:

(A) Limit the geographic scope of the COA.

(B) Limit the scope of an SPCOA's service to facilities-based, resale-only, data-only, geographic scope, or some combination of the preceding list.

(h) **Certificate Name.** All local exchange telephone service, basic local telecommunications service, and switched access service provided under a COA or SPCOA must be provided in the name under which certification was granted by the commission. The commission shall grant the COA or SPCOA certificate in only one name.

(1) The applicant must provide the following information from its registration with the Texas Secretary of State or registration with another state or county, as applicable:

(A) Form of business being registered (*e.g.*, corporation, company, partnership, sole proprietorship, etc.);

(B) Any assumed names;

(C) Certification/file number; and

(D) Date business was registered.

(2) Business names shall not be deceptive, misleading, inappropriate, confusing or duplicative of existing name currently in use or previously approved for use by a Certificated Telecommunications Provider (CTP).

(3) Any name in which the applicant proposes to do business will be reviewed for compliance with paragraph (2) of this subsection. If the presiding officer determines that any requested name does not meet the requirements of paragraph (2) of this subsection, the presiding officer shall notify the applicant that the requested name may not be used by the applicant. The applicant will be required to amend its application to provide at least one suitable name in order to be certificated.

(i) **Amendment of a COA or SPCOA Certificate.**

(1) A person or entity granted a COA or SPCOA by the commission shall file an application to amend the COA or an SPCOA in a commission approved format in order to:

(A) Change the corporate name or assumed name of the certificate holder.

(i) Name change amendments may be granted on an administrative basis, if the holder is in compliance with applicable commission rules and no hearing is requested.

(ii) Commission staff will review any name in which the applicant proposes to do business. If staff determines that any requested name is deceptive, misleading, vague, inappropriate, or duplicative, it shall notify the applicant that the requested name may not be used by the applicant. The applicant will be required to provide at least one suitable name or the amendment may be denied.

(B) Change the geographic scope of the COA and SPCOA.

(C) Sell, transfer, assign, or lease a controlling interest in the COA or SPCOA or sell, transfer or lease a controlling interest in the entity holding the COA or the SPCOA. An application for this type of amendment must:

(i) be filed at least 60 days prior to the occurrence of the transaction;

(ii) be jointly filed by the transferor and transferee;

(iii) comply with the requirements for certification; and

(iv) comply with applicable commission rules.

(D) Change Type of Provider from resale-only, facilities-based only or data-only restrictions on a SPCOA certificate.

(E) Discontinuation of service and relinquishment of certificate, or discontinuation of optional services.

(i) A deregulated company holding a certificate of operating authority or an Exempt Carrier shall provide the information in subclauses (I)-(III) of this clause for the discontinuation of its service and relinquishment of its certificate. The requirements for the discontinuation of optional services do not apply to a deregulated company holding a certificate of operating authority or an Exempt Carrier.

(I) Certification that the carrier will send customers whose service is being discontinued a notification letter providing a minimum of 61 days of notice of termination of service and clearly stating the date of termination of service;

(II) A statement regarding the disposition of customer credits and deposits; and

(III) Certification that the carrier will comply with §26.24 of this title (relating to Credit Requirements and Deposits).

(ii) For all other carriers, such an application is subject to subsections (m) and (n) of this section.

(2) If the application to amend is for corporate restructuring, a change in internal ownership, or an internal change in controlling interest, the applicant may file an abbreviated amendment application, unless the ownership or controlling interest involves an uncertificated company, significant changes in management personnel, or changes to the underlying financial qualifications of the certificate holder as previously approved. If the commission staff cannot make a determination of continued compliance based on the applicable substantive rules from the information provided on the abbreviated amendment application, then a full amendment application shall be filed.

(3) When a certificate holder acquires or merges with another certificate holder (other than a CCN holder), the acquiring entity must file a notice within 30 days of the closing of the acquisition or merger in a project established by staff. Staff shall have 10 business days to review the notice and determine whether a full amendment application will be required. If staff has not filed, within 10 business days, a request to docket the proceeding and determination that a full amendment application is required, a notice of approval may be issued. Notice to the commission shall include but not be limited to:

(A) A joint filing statement;

(B) Certificated entity names, certificate numbers, contact information, and statements of compliance; and

(C) An affidavit from each certificated entity attesting to compliance of COA or SPCOA certification requirements.

(4) No later than five working days after filing an amendment application or amendment notice with the commission, the applicant must provide a copy of the amendment application or notice to all affected 9-1-1 entities and the Commission on State Emergency Communications.

(5) If the application to amend requests any change other than a name change, the factors as set forth in subsections (c) and (d) of this section may be considered by the commission in determining whether to approve an amendment to a COA or SPCOA.

(j) **Non-use of certificates.** Applicants shall use their COA or SPCOA certificates expeditiously.

(1) A certificate holder that has discontinued providing service for a period of 12 consecutive months after the date the certificate holder has initially begun providing service must file an affidavit on an annual basis attesting that it continues to possess the required technical and financial resources necessary to provide the level of service proposed in its initial application.

(2) A certificate holder that has not provided service within 24 months of being granted the certificate by the commission may have its certificate suspended or revoked.

(k) **Renewal of certificates.** Each COA and SPCOA holder is required to file with the commission a renewal of its certification once every ten years. The commission may, prior to the ten year renewal requirement, require each COA and SPCOA holder to file, the following year, a renewal of its certification.

(1) The certification renewal will consist of:

(A) the certificate holder's name;

(B) the certificate holder's address; and

(C) the most recent version of the annual report the commission requires the certificate holder to submit to comply with subsection (l)(1) of this section, to the extent required by PURA and this title.

(2) The certification renewal shall be filed on or before June 1, 2014 and every ten years thereafter.

(3) COA or SPCOA holders will have an automatic extension of the filing deadline until October 1st of each reporting year to comply with paragraph (1) of this subsection. The commission staff will send three notices to each COA and SPCOA holder that has not submitted its certification renewal by June 1st. The first notice will be sent on or before July 1st, the second notice will be sent on or before August 1st, and the third notice will be sent on or before September 1st. Failure to send any of these notices by the commission or failure to receive any of these notices by a COA or SPCOA holder shall not affect the requirement to renew a certificate under this section by October 1st of the renewal period.

(4) Failure to timely file the annual renewal required in paragraph (1) of this subsection on or before October 1st of each reporting year will automatically render the certificate of the COA or SPCOA invalid.

(5) COA or SPCOA holders that are found to be invalid are no longer in compliance with PURA §54.001.

(6) COA or SPCOA holders that continue to provide regulated telecommunications services under an invalid COA or SPCOA may be subject to administrative penalties and other enforcement actions.

(7) A certificate holder whose COA or SPCOA certificate is no longer valid may obtain a new certificate only by complying with the requirements prescribed for obtaining an original certificate.

(l) **Reporting Requirements.**

(1) Each COA or SPCOA holder must provide and maintain accurate contact information using the annual report to the extent required by PURA and this title. At a minimum, the COA or SPCOA holder shall maintain a current regulatory contact person, complaint contact person, primary and secondary emergency contact, operation and policy migration contact, business physical and mailing address, primary business telephone number, toll-free customer service number, and primary email address. The COA or SPCOA holder shall submit the required information in the manner established by the commission.

(2) The applicable annual report is due on or before April 30 of each calendar year. The COA or SPCOA holder must electronically submit the required information in a manner established by the commission.

(3) When terminating or disconnecting service to another CTP, COA and SPCOA holders shall file a copy of the termination/disconnection notice with the commission not later than two business days after the notice is sent to the CTP. The service termination/disconnection notice shall be filed under a project number established for that purpose.

(4) COA and SPCOA holders shall file a notice of the initiation of a bankruptcy in a project number established for that purpose. The notice must be filed not later than the fifth business day after the filing of the bankruptcy petition. The notice of bankruptcy must also include, at a minimum, the following information:

(A) The name of the certificated company that is the subject of the bankruptcy petition, the date and state in which bankruptcy petition was filed, type of bankruptcy (*e.g.*, Chapter 7, 11, or 13, and whether it is voluntary or not), the bankruptcy case number; and

(B) The number of affected customers, the type of service being provided to the affected customers, and the name of the provider(s) of last resort associated with the affected customers.

(5) A certificate holder shall file all reports to the extent required by PURA and this title, including but not limited to: §26.51 of this title (relating to Reliability of Operations of Telecommunications Providers); §26.76 of this title (relating to Gross Receipts Assessment Report); §26.80 of this title (relating to Annual Report on Historically Underutilized Businesses); §26.85 of this title (relating to Report of Workforce Diversity and Other Business Practices); §26.89 of this title (relating to Nondominant Carriers' Obligations Regarding Information on Rates and Services); §26.465 of this title (relating to Methodology for Counting Access Lines and Reporting Requirements for Certified Telecommunications Providers); and §26.467 of this title (relating to Rates, Allocation, Compensation, Adjustments and Reporting).

(m) **Standards for discontinuation of service and relinquishment of certification.** A COA or SPCOA holder may cease operations in the state only if commission authorization to cease operations has been obtained. A COA or SPCOA holder that ceases operations and relinquishes its certification shall comply with PURA §54.253 (relating to Discontinuation of Service by Certain Certificate Holders). This section does not apply to a deregulated company holding a certificate of operating authority or to an Exempt Carrier.

(1) Before the certificate holder ceases operations, it must give notice of the intended action to the commission, each affected customer, the Commission on State Emergency Communications, each wholesale provider of telecommunications facilities or services from which the certificate holder purchased facilities or services, the Texas Universal Service Fund, and the Office of Public Utility Counsel (OPC).

(A) The notification letter shall clearly state the intent of the certificate holder to cease providing service.

(B) The notification letter shall give customers a minimum of 61 days of notice of termination of service, and the date of termination of service shall be clearly stated in the notification letter.

(C) The notification letter shall inform customers of the carrier of last resort or make other arrangements to provide service as approved by the customers.

(2) A COA or SPCOA holder that intends to cease operations shall file with the commission an application to cease operations and relinquish its certificate, which shall provide the following information:

(A) Name, address, and phone number of certificate holder;

(B) COA or SPCOA certificate number being relinquished;

(C) The commission docket number in which the COA or SPCOA was granted;

(D) A description of the areas in which service will be discontinued and whether basic service is available from other certificate holders in these areas;

(E) A description of any contractual arrangements with customers that will not be honored, as a consequence of the cessation of operations; and

(F) A statement regarding the disposition of customer credits and deposits, and a sworn statement stating the authority to relinquish certification, that proper notice of the relinquishment has been provided to all customers, and that the information provided in the application is true and correct.

(3) All customer deposits and credits shall be returned within 60 days of notification to cease operations and relinquish certification.

(4) Any switchover fees that will be charged to affected customers as a consequence of the cessation of operations shall be paid by the certificate holder relinquishing the certificate.

(5) Commission approval of the cessation of operations does not relieve the COA or SPCOA of obligations to its customers under contract or law.

(n) **Standards for discontinuing optional services.** A COA or SPCOA holder discontinuing optional services shall comply with PURA §54.253. This section does not apply to a deregulated company holding a certificate of operating authority or to an Exempt Carrier.

(1) The COA or SPCOA holder shall file an application with the commission to discontinue optional services, which shall provide the following information:

(A) Name, address, and phone number of certificate holder;

(B) COA or SPCOA certificate number being amended;

(C) The commission docket number in which the COA or SPCOA was granted;

(D) A description of the optional services that will be discontinued and whether such services are available from other certificate holders in the areas served by the certificate holder;

(E) A description of any contractual arrangements with customers that will not be honored, as a consequence of the discontinuation of optional services; and

(F) A sworn statement stating the authority to discontinue service options, that proper notice of the discontinuation of service has been provided to all customers, and that the information provided in the amended application is true and correct.

(2) Notification to each customer receiving optional services is required, consisting of the following information:

(A) The notification letter shall clearly state the intent of the certificate holder to cease an optional service and a copy of the letter shall be provided to the commission and OPC.

(B) The notification letter shall give customers a minimum of 61 days of notice of discontinuation of optional services.

(3) All customer deposits and credits affiliated with the discontinued optional services shall be returned within 30 days of discontinuation.
(4) The certificate holder shall maintain the optional services until it has obtained commission authorization to cease the optional services.
(5) Commission approval of the discontinuation of an optional service does not relieve the certificate holder of obligations to its customers under contract or law.

(o) **Revocation or suspension.** A certificate granted pursuant to this section is subject to amendment, suspension, or revocation by the commission for violation of PURA or commission rules or if the holder of the certificate does not meet the requirements under this section to the extent required by PURA and this title to operate as a COA or SPCOA. A suspension of a COA or SPCOA certificate requires the cessation of all COA or SPCOA activities associated with obtaining new customers in the state of Texas. A revocation of a COA or SPCOA certificate requires the cessation of all COA or SPCOA activities in the state of Texas, pursuant to commission order. The commission may also impose an administrative penalty on a person for violations of law within its jurisdiction. The commission staff or any affected person may bring a complaint seeking to amend, suspend, or revoke a COA or SPCOA's certificate. Grounds for initiating an investigation that may result in the suspension or revocation include the following:

(1) Non-use of approved certificate for a period of 24 months, without re-qualification prior to the expiration of the 24-month period;
(2) Providing false or misleading information to the commission;
(3) Bankruptcy, insolvency, failure to meet financial obligations on a timely basis, or the inability to obtain or maintain the financial resources needed to provide adequate service;
(4) Violation of any state law applicable to the certificate holder that affects the certificate holders' ability to provide telecommunications services;
(5) Failure to meet commission reporting requirements to the extent required by PURA and this title;
(6) Engaging in fraudulent, unfair, misleading, deceptive, or anti-competitive practices or unlawful discrimination in providing telecommunications service;
(7) Switching, or causing a customer's telecommunications service to be switched, without first obtaining the customer's permission;
(8) Billing an unauthorized charge, or causing an unauthorized charge to be billed, to a customer's telecommunications service bill;
(9) Failure to maintain financial resources in accordance with subsection (f)(1) of this section;
(10) A pattern of not responding to commission inquiries or customer complaints in a timely fashion;
(11) Suspension or revocation of a registration, certification, or license by any state or federal authority;
(12) Conviction of a felony by the certificate holder, a person controlling the certificate holder, or principal employed by the certificate holder, or any crime involving theft, fraud, or deceit related to the certificate holder's service;
(13) Failure to serve as a provider of last resort if required to do so by the commission;
(14) Failure to provide required services to customers under the federal or Texas Universal Service Fund;
(15) Failure to comply with the rules of the federal or Texas Universal Service Fund; and
(16) Violations of PURA or any commission rule or order applicable to the certificate holder.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter F. REGULATION OF TELECOMMUNICATIONS SERVICE.

§26.121. Privacy Issues.

(a) **Application.** Unless the context clearly indicates otherwise, in this section the term "utility" shall refer to all dominant certificated telecommunications utilities as defined in §26.5 of this title (relating to Definitions).

(b) **Purpose.** It is commission policy that customers of all dominant certificated telecommunications utilities should be permitted to control the outflow of information about themselves.

(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 of this title (relating to Form and Filing of Tariffs), §26.209 of this title (relating to New and Experimental Services), §26.210 of this title (relating to Promotional Rates for Local Exchange Company Services), §26.211 of this title (relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges), or §26.227 of this title (relating to Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58 Companies) 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 of this title, §26.209 of this title, §26.210 of this title, §26.211 of this title, or §26.227 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) **Identification of privacy issues.** The dominant certificated telecommunications utility shall identify all privacy issues that result from the implementation of the new service or feature. Identification of privacy issues shall include, but not be limited to:
(A) identification and description of the type of information that is released as a result of the new service or feature;
(B) identification of the category of customers about whom information will be released;
(C) identification of the category of entities to whom information about a customer will be released;
(D) identification and description of the change in the technology used to convey the information;
(E) identification and description of the change in the time at which the information is conveyed; and
(F) identification and description of any other change in the collection, use, storage, or release of information.
(2) **Lost degree of privacy.** For each privacy issue identified pursuant to paragraph (1) of this subsection, the dominant certificated telecommunications utility shall identify all circumstances under which a customer of the dominant certificated telecommunications utility may experience diminished privacy as a result of the implementation of the new service or feature proposed in the application, including, but not limited to, whether a customer's name, address, or telephone number will be provided to a called party or to any other third party, and for each such circumstance identified:
(A) state whether the lost degree of privacy can be restored by the affected customers and how such customers can restore it;

(B) state whether the dominant certificated telecommunications utility will charge the affected customers for restoring the lost degree of privacy and, if applicable:

(i) state what such charge will be; and

(ii) show good cause for such charge;

(C) state how the dominant certificated telecommunications utility will educate the affected customers as to the implications for privacy and, if applicable, the means by which such customers can restore the lost degree of privacy; and

(D) show good cause, if applicable, for not offering the affected customers a means by which the lost degree of privacy can be restored.

(3) **Staff review.** Staff shall review all applications submitted by a dominant carrier under the provisions of §26.207 of this title, §26.209 of this title, §26.210 of this title, §26.211 of this title, or §26.227 of this title for privacy issues and privacy issues resulting in a lost degree of privacy.

(e) **Notice of number delivery over 800, 888, and other toll-free prefixes and 900 services.** The dominant certificated telecommunications utilities shall print in the white pages of their telephone directories, and send as a billing insert annually to all of their customers, the statement: "Per-line or per-call blocking does not prevent transmission of your telephone number when you call a company using an 800, 888 or 900 number. Therefore, your number may be available to that company's service representative before your call is answered." The statement must appear in all telephone directories published for the dominant certificated telecommunications utility subsequent to the effective date of this section. The statement must appear annually as a billing insert for each dominant certificated telecommunications utility.

§26.123. Caller Identification Services.

(a) **Application.** Unless the context clearly indicates otherwise, this section applies to all telecommunications utilities and providers of commercial mobile radio services otherwise herein referred to as "Providers of Caller ID." This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Regulatory Act (PURA) §52.154.

(b) **Caller identification services ("caller ID").**

(1) **Application.** This subsection shall not be construed to apply to:

(A) an identification service that is used within the customer's own system, including a central office based PBX-type system;

(B) information that is used on a public agency's emergency telephone line or on a line that receives the primary emergency telephone number (9-1-1, or E9-1-1);

(C) information passed between telecommunications utilities, enhanced service providers, or other entities that is necessary for the set-up, processing, transmission, or billing of telecommunications or related services;

(D) information provided in compliance with applicable law or legal process; or

(E) an identification service provided in connection with a "700," "800," "888," "900," or similar access code telecommunications service.

(2) **Caller ID blocking.**

(A) Per-call blocking. All providers of caller ID shall provide per-call blocking at no charge to each telephone subscriber in the specific area in which caller ID is offered.

(B) Per-line blocking.

(i) A provider of caller ID may offer and provide per-line blocking to any customer at any time without any notification to the commission by the customer or the provider. The telecommunications provider is encouraged to notify the customer by mail of the effective date that per-line blocking will be instituted.

(ii) All providers of caller ID, with the exception of commercial mobile radio service providers, shall provide per-line blocking at no charge to a particular customer in the specific area in which caller ID is offered if the commission receives from the customer written certification that the customer has a compelling need for per-line blocking. Commercial mobile radio service providers shall provide per-line blocking to a particular customer in the specific area in which caller ID is offered if the commission receives from the customer written certification that the customer has a compelling need for per-line blocking.

(I) When a customer requests per-line blocking through the commission, the provider of caller ID shall notify the customer by mail of the effective date that per-line blocking will be instituted.

(II) The commission may prescribe and assess fees and assessments from providers of caller ID in an amount sufficient to cover the additional expenses incurred by the commission in implementing the customer certification provisions of this clause.

(III) Reports, records, and information received under this clause by the commission or by a provider of caller ID are confidential and may be used only for the purposes of administering this subparagraph.

(iii) A provider of caller ID may assess a service order charge relating to administrative costs to reinstate per-line blocking on a line, if the customer initially received the per-line block at no charge and then later asked the provider to remove it. The service charge authorized by this clause must be

approved by the commission except where the provider of Caller ID is a commercial mobile radio service provider.

(3) **Blocking failures and provider responsibilities.** When a provider of caller ID service to a customer originating a call becomes aware of a failure to block the delivery of calling party information from a line equipped with per-line blocking or per-call blocking (and the caller had attempted to block the call), it shall report such failure to the Caller ID Consumer Education Panel, the commission, and the affected customer if that customer did not report the failure. The provider shall report such failure to the commission by contacting the commission liaison to the panel. A reasonable effort shall be made to notify the affected customer within 24 hours after the provider becomes aware of such failure.

(4) **Public policy statement.** A provider of caller ID services shall inform all of its telephone subscribers of how the subscriber can unblock a line equipped with per-line blocking.

(5) **Caller ID Consumer Education Panel.** The Caller ID Consumer Education Panel shall consist of one person appointed by the Governor, one person appointed by the chair of the commission, after consultation with the Texas Council on Family Violence, and one person appointed by the Public Counsel of the Office of Public Utility Counsel. A commission staff member shall serve as liaison between the panel and the commission.

(A) Role of the Caller ID Consumer Education Panel. The panel shall meet at least quarterly to:

(i) review the level of effort and effectiveness of consumer education materials;

(ii) investigate whether educational materials are distributed in as effective a manner as marketing materials; and

(iii) develop recommendations for the commission related to the safe use of caller ID services, promotion and preservation of privacy for both the called and calling customers, and efforts to decrease the likelihood of harm resulting from caller ID services.

(B) Reporting. The panel shall file an annual report with the commission detailing its findings and recommendations pursuant to subparagraph (A) of this paragraph. The commission may implement the recommendations of the panel, as well as those of any interested party, to the extent consistent with the public interest.

(C) Evaluation of the panel. The commission shall evaluate the panel annually. The evaluation shall be conducted by an evaluation team appointed by the executive director of the commission. The commission liaison, members of the panel, and any other commission employee who works either directly or indirectly with the panel shall not be eligible to serve on the evaluation team. The evaluation team will report to the commission in open meeting each August of its findings regarding:

(i) the panel's work;

(ii) the panel's usefulness; and

(iii) if the panel is reimbursed for its costs by the state, the costs related to the panel's existence, including the cost of agency staff time spent in support of the panel's activities.

(D) Duration of the panel. The panel shall disband on September 1, 1999, unless reauthorized by statute.

(E) Filing of caller ID materials. A provider of caller ID services shall provide all existing caller ID materials used as well as all future materials (when they become available) as follows:

(i) One copy of all such material shall be mailed to each member of the panel.

(ii) Two copies of all such material shall be filed in Central Records under Project Number 14505.

(c) **Usage of calling party information in other services.** A dominant certificated telecommunications utility may not use calling party information to allow the called party to contact the calling party, when that calling party had indicated a desire for privacy in the initial call by blocking the delivery of his or her calling party information through the use of either a per-call or per-line blocking option, as those terms are defined in §26.5 of this title (relating to Definitions).

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Subchapter F. REGULATION OF TELECOMMUNICATIONS SERVICE.

§26.124. Pay-Per-Call Information Services Call Blocking.

(a) **Free blocking.** Within 90 days of being declared a dominant carrier, all dominant certificated telecommunications utilities (DCTUs) are required, upon request from the end user only, to block access to all pay-per-call information services when a call is placed to a 1-900-XXX-XXXX or 976-XXXX number. There will be no charge to the end user for the first blocking request when pay-per-call information service blocking is first installed on the end user's line. However, there may be a non-recurring charge applicable for subsequent blocking requests, if prior blocking has been removed and is being reinstated.

(b) **Subscription to blocking.**

(1) **End users not currently receiving blocking.** To restrict access to pay-per-call information services, end users must order blocking either orally or by using a written ballot. Within 60 days of being declared a DCTU, each DCTU must notify its end users of the free blocking opportunity and send a post-paid ballot to all existing end users (either through bill inserts or a separate mailing) allowing them to choose whether they want to restrict access to pay-per-call information services.

(2) New end users must be offered free blocking of pay-per-call information service calls at the time of their service order. There will be no charge to the end user for the first blocking request, but there may be a non-recurring charge applicable for subsequent blocking requests.

(3) End users electing not to restrict access to pay-per-call information services will have access to all 900 and 976 pay-per-call information services available in their service area.

(c) **Mandatory blocking.** In areas where restricting access to pay-per-call information services on a selective, per-line basis is not technically possible, all access to the pay-per-call information services must be blocked.

(1) End users whose access to pay-per-call information services is blocked pursuant to this provision shall be notified prior to the time of the blocking that such blocking will take place, the fact that such blocking is being done pursuant to this section, and that such blocking is required due to the fact that restriction of access to such services is not technically possible at that time.

(2) Once an area that has been mandatorily blocked attains the technological capability to provide per-line blocking, the DCTU shall provide the notice and balloting procedures set out in subsections (a) and (b) of this section. A blocking request from the end user received thereafter by the DCTU shall be treated as an initial blocking request and implemented without charge.

(d) **Disconnection.** A DCTU may not disconnect an end user's local telephone service for nonpayment of charges for pay-per-call information service. A DCTU may implement involuntary blocking of pay-per-call information service for nonpayment of charges for pay-per-call information service.

(e) **Compliance.** Each DCTU that is subject to rate of return regulation under Public Utility Regulatory Act, Chapter 53 shall file tariffs in compliance with this section. The compliance tariffs will be reviewed by staff. Within 35 days of the date of filing of the tariffs, the tariffs will either be approved or the effective date of the tariff will be suspended for further review.

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Subchapter F. REGULATION OF TELECOMMUNICATIONS SERVICE.

§26.125. Automatic Dial Announcing Devices (ADADs).

(a) **Purpose.** The purpose of this section is to regulate the use of ADADs.

(b) **Application.** The provisions of this section apply to an ADAD used to make a telephone call that originates or terminates in the state of Texas.

(c) **Requirements for use of an ADAD**. A person who operates an ADAD to make a telephone call in which the device plays a recorded message when a connection is completed to a telephone number must comply with the following requirements.

(1) An ADAD operator must obtain a permit from the commission and give written notice specifying the type of device to be connected to each telecommunications utility over whose system the device is to be used.

(2) The device must not be used for random number dialing or to dial numbers by successively increasing or decreasing integers. In addition, the device must not be used in a way such that two or more telephone lines of a multi-line business are engaged simultaneously.

(3) Within the first 30 seconds of the call, the ADAD message must clearly state the nature of the call, the identity of the business, individual, or other entity initiating the call, and the telephone number (other than that of the ADAD which placed the call) or address of the business, individual, or entity. This paragraph does not apply to the ADAD if the ADAD is used:

(A) for debt collection purposes in compliance with applicable federal law and regulations; and

(B) by a live operator for automated dialing for hold announcement purposes.

(4) The entire ADAD message must be delivered in a single language.

(5) The device must disconnect from the called person's line no later than five seconds after the call is terminated by either party or, if the device cannot disconnect within that period, a live operator must introduce the call and receive the oral consent of the called person before beginning the message. In addition, the device must comply with the line seizure requirements in 47 Code of Federal Regulations §68.318(c).

(6) The device, when used for solicitation purposes, must have a message shorter than 30 seconds or have the technical capacity to recognize a telephone answering device on the called person's line and terminate the call within 30 seconds.

(7) For calls terminating in Texas, the device must not be used to make a call:

(A) for solicitation before noon or after 9:00 p.m. on a Sunday or before 9:00 a.m. or after 9:00 p.m. on a weekday or a Saturday; or

(B) for collection purposes at an hour at which collection calls would be prohibited under the federal Fair Debt Collection Practices Act (15 United States Code §1692, *et seq*.).

(8) Calls may not be made to emergency telephone numbers of hospitals, fire departments, law enforcement offices, medical physician or service offices, health care facilities, poison control centers, "911" lines, or other entities providing emergency service. In addition, calls may not be made to telephone numbers of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment, any telephone numbers assigned to paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier, or any service for which the called party is charged for the call.

(9) If during a call a cross-promotion or reference to a pay-per-call information service is made, the call must include:

(A) a statement that a charge will be incurred by a caller who makes a call to a pay-per-call information services telephone number;

(B) the amount of the flat-rate or cost-per-minute charge that will be incurred or the amount of both if both charges will be incurred; and

(C) the estimated amount of time required to receive the entire information offered by the service during a call.

(d) **Permit to operate an ADAD.**

(1) An application for a permit to use one or more ADADs must be made using a form prescribed by the commission and must be accompanied by a fee of $50. A permit is valid for one year after its date of issuance. An application for a renewal permit shall be filed using the form prescribed by the commission, accompanied by a fee of $15, not less than 90 days prior to the expiration date of the current permit.

(2) Each application for the issuance or renewal of a permit under this section must contain the telephone number of each ADAD that will be used and the physical address from which the ADAD will operate in the format required by the commission. If the telephone number of an ADAD or the physical address from which the ADAD operates changes, the owner or operator of the ADAD shall notify the commission by certified mail in the required format of each new number or address not later than the 48th hour before the hour at which the ADAD will begin operating with the new telephone number or at the new address. If the owner or operator of an ADAD fails to notify the commission as required by this subsection within the period prescribed by this subsection, the permit is automatically invalid.

(3) In determining if a permit should be issued or renewed, the commission will consider the compliance record of the owner or operator of the ADAD. The commission may deny an application for the issuance or renewal of a permit because of the applicant's compliance record.

(4) A local exchange company (LEC) may obtain, on request to the commission, a copy of a permit issued under this section and of any changes relating to the permit.

(5) The commission may revoke a permit to operate an ADAD for failure to comply with this section.

(e) **Exceptions**. This section does not apply to the use of an ADAD to make a telephone call:

(1) relating to an emergency or a public service under a program developed or approved by the emergency management coordinator of the county in which the call was received;

(2) made by a public or private primary or secondary school system to locate or account for a truant student;

(3) made by a municipality or a person calling on behalf of a municipality to deliver information to citizens of the municipality regarding public health, safety, or welfare issues; or

(4) made by an organization to a member of the organization.

(f) **Complaints, investigation, and enforcement.**

(1) If the commission determines that a person has violated the requirements of this section, the telecommunications utility providing service to the user of the ADAD shall comply with a commission order to disconnect service to the person. The telecommunications utility may reconnect service to the person only on a determination by the commission that the person will comply with this section. The telecommunications utility shall give notice to the person using the ADAD of the telecommunications utility's intent to disconnect service not later than the third day before the date of the disconnection, except that if the ADAD is causing network congestion or blockage, the notice may be given on the day before the date of disconnection.

(2) A telecommunications utility may, without an order by the commission or a court, disconnect or refuse to connect service to a person using or intending to use an ADAD if the telecommunications utility determines that the device would cause or is causing network harm.

(3) A LEC that receives a complaint relating to the use of an ADAD shall send the complaint to the commission according to the following guidelines:

(A) the complaint shall be recorded on a form prescribed by the commission;

(B) the LEC shall inform the complainant that the complaint, including the identity of the complainant and other information relevant to the complaint, will be forwarded to the commission;

(C) the complaint form and any written complaint shall be forwarded to the commission within three business days of its receipt by the LEC.

(g) **Permit suspension/child support enforcement.** In consideration of the Texas Family Code Annotated, Chapter 232, as it may be subsequently amended, which provides for the suspension of state-issued licenses for failure to pay child support, the commission shall follow the procedures set out in this subsection.

(1) **Provision of information to a Title IV-D agency.** Upon request, the commission shall provide a Title IV-D agency with the name, address, social security number, license renewal date, and other identifying information for each person who holds, applies for, or renews an ADAD permit issued by the commission. This information shall be provided in a format agreed to between the Title IV-D agency and the commission.

(2) **Suspension of permit.** Upon receipt of a final order issued by a court or a Title IV-D agency suspending an ADAD permit under the provisions of the Texas Family Code, Chapter 232, the commission shall immediately:

(A) record the suspension of the permit in the commission's files; and

(B) notify the telecommunications utility providing service to the user of an ADAD that the permit has been suspended.

(3) **Service disconnection.** Upon receipt of notification by the commission that a permit has been suspended under the provisions of this subsection, the telecommunications utility providing service to that user of an ADAD shall immediately disconnect service to that person.

(4) **Refund of fees.** A person who holds, applies for, or renews an ADAD permit issued by the commission that is suspended under the provisions of this subsection is not entitled to a refund of any fees paid under subsection (d) of this section.

(5) **Reinstatement.** The commission may not modify, remand, reverse, vacate, or reconsider the terms of a final order issued by the court or a Title IV-D agency suspending a permit under the provisions of the Texas Family Code, Chapter 232. However, upon receipt of an order by the court or Title IV-D agency vacating or staying an order suspending a person's permit to operate an ADAD, the commission shall promptly issue or re-issue the affected permit to that person if that person is otherwise qualified for the permit and has paid the applicable fees as set out in subsection (d) of this section.

(h) **Penalties**. A person who operates an ADAD without a valid permit, with an expired permit, or with a permit that has been suspended under the provisions of subsection (g) of this section or who otherwise operates the ADAD in violation of this section or a commission order, is subject to an administrative penalty of not more than $1,000 for each day or portion of a day during which the ADAD was operating in violation of this section. However, nothing in this subsection is intended to limit the commission's authority under the Public Utility Regulatory Act §15.021, *et seq.*

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter F. REGULATION OF TELECOMMUNICATIONS SERVICE.

§26.127. Abbreviated Dialing Codes.

(a) **Code assignments.** The following abbreviated dialing codes may be used in Texas:
- (1) 211 -- Community Information and Referral Services;
- (2) 311 -- Non-Emergency Governmental Service;
- (3) 411 --
  - (A) Directory Assistance; and
  - (B) Directory Assistance Call Completion;
- (4) 511 -- Traffic and Transportation Information;
- (5) 611 -- Repair Service;
- (6) 711 -- Telecommunications Relay Service;
- (7) 811 -- One Call Excavation Notification; and
- (8) 911 -- Emergency Service.

(b) **Use only as directed.** A certificated telecommunications utility (CTU) within the State of Texas may assign or use N11 dialing codes only as directed by the commission.

(c) **Limitations.** The following limitations apply to a CTU's use of N11 dialing codes for internal business and testing purposes:
- (1) use may not interfere with the assignment of such numbers by the FCC and the North American Numbering Plan (NANP); and
- (2) use of an N11 dialing code must be discontinued on short notice if the number is reassigned on a statewide or nationwide basis.

(d) **211 service.**
- (1) **Scope and purpose.** This subsection applies to the assignment, provision, and termination of 211 service. Through this subsection, the commission intends to enhance the ability of the public to access services that provide free information and referral to community resources in situations that are not immediately life-endangering, but still represent a serious but less urgent threat to basic human needs and individuals' health or welfare.
- (2) **Definitions.** The following words and terms, when used in this subsection, shall have the following meanings unless the context indicates otherwise:
  - (A) **Alliance of Information and Referral Systems (AIRS)** -- A professional organization whose mission is to unite and serve the field and to advance the profession of information and referral as a vital means of bringing people and services together. AIRS has developed national quality standards and methods of evaluating information and referral services.
  - (B) **Area Information Center (AIC)** -- An entity that serves as regional coordinator for health and human services information for a specified geographical area or region.
  - (C) **Community resource** -- A for profit or nonprofit resource that provides health or human services in a designated geographic area.
  - (D) **Information and referral service** -- A service whose primary purpose is to maintain information about human service resources in the community and to link people who need assistance with appropriate service providers and/or to supply descriptive information about the agencies or organizations which offer services.
  - (E) **Selective routing** -- The feature provided with 211 service by which 211 calls are automatically routed to the 211 answering point for serving the place from which the call originates.

(F) **Texas Information and Referral Network (Texas I & R Network)** -- A program of the Health and Human Services Commission (HHSC) that is responsible for the development, coordination, and implementation of the statewide information and referral network.

(G) **211 answering point** -- An AIC that:

(i) provides 24 hour, seven day a week operations;

(ii) is assigned by HHSC the responsibility to receive 211 calls;

(iii) serves the area or region designated by HHSC; and

(iv) performs the roles and responsibilities of an AIC.

(H) **211 service --** A telecommunications service provided by a CTU to a designated area information center through which the end user of a public phone system has the ability to access services providing free information and referrals regarding community service organizations.

(3) **Role and responsibilities of the Texas Health and Human Services Commission (HHSC).**

(A) To designate an AIC as a 211 provider for a particular geographical area;

(B) HHSC and the AICs educate the populace about the use of 211 service from its inception through termination;

(C) HHSC is responsible for dispute resolution should a conflict regarding the selection of an AIC occur; and

(D) HHSC may terminate an AIC's designation for good cause and is responsible for ensuring prompt and efficient selection of a new AIC for continuation of service.

(4) **Use of the 211 system.**

(A) 211 calls may not be completed over the 311 or 911 networks or use the 311 or 911 databases.

(B) The 211 network shall not be used for commercial advertisements.

(5) **Privacy policy.** To preserve the privacy of callers who wish to use the 211 service anonymously, an AIC which uses Automatic Number Identification (ANI), Automatic Location Identification (ALI) service or other equivalent non-blockable information-gathering features for the provision of 211 service must establish an in-house procedure that is consistent with the AIRS national standards and the standards set forth by HHSC that allows access to the 211 service while honoring the caller's call and line-blocking preferences and/or caller anonymity.

(6) **Fee.** Neither an AIC nor a CTU may charge end users a fee on a per-call or per-use basis for using the 211 system.

(e) **311 service.**

(1) **Scope and purpose.** This subsection applies to the assignment, provision, and termination of 311 service. Through this subsection, the commission strives to strengthen the 911 system by alleviating congestion on the 911 system through the establishment of a framework for governmental entities to implement a 311 system for non-emergency police and other governmental services.

(2) **Definition.** The term "governmental entity" when used in this subsection means any county, municipality, emergency communication district, regional planning commission, appraisal district, or any other subdivision or district that provides, participates in the provision of, or has authority to provide fire-fighting, law enforcement, ambulance, medical, 911, or other emergency service as defined in Texas Health & Safety Code §771.001, as may be subsequently amended.

(3) A certificated telecommunications utility must have a commission-approved application to provide 311 service.

(4) **Requirements of application by certificated telecommunications utility.**

(A) Applications, tariffs, and notices filed under this subsection shall be written in plain language, shall contain sufficient detail to give customers, governmental entities, and other affected parties adequate notice of the filing, and shall conform to the requirements

of §26.209 of this title (relating to New and Experimental Services) or §26.211 of this title (relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges), whichever is applicable.

(B) A CTU shall provide a copy of the text of the proposed notice to notify the public of the request for 311 service with the filing of an application for regulatory approval of the certificated telecommunications utility's provision of 311 service.

(C) No application for 311 service allowing the governmental entity to charge its citizens a fee on a per-call or per-use basis for using the 311 system shall be approved.

(D) All applications for 311 service shall include the governmental entity's plan to educate its populace about the use of 311 at the inception of 311 service and its plan to educate its populace at the termination of the governmental entity's provision of 311 service.

(5) **Notice.** The presiding officer shall determine the appropriate level of notice to be provided and may require additional notice to the public.

(A) The certificated telecommunications utility shall file with the commission a copy of the text of the proposed notice to notify the public of the request for 311 service and the filing of an application for regulatory approval of the certificated telecommunications utility's provision of 311 service. This copy of the proposed notice shall be filed with the commission not later than ten days after the certificated telecommunications utility receives the 311 service request; and

(B) The proposed notice shall include the identity of the governmental entity, the geographic area to be affected if the new 311 service is approved, and the following language: "Persons who wish to comment on this application should notify the commission by (specified date, 30 days after notice is published in the *Texas Register*). Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or toll free at (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136."

(6) A certificated telecommunications utility may provide 311 service only to governmental entities.

(7) A 311 service request shall start the six-month deadline to "take any necessary steps to complete 311 calls" as required by the Federal Communications Commission's Order In the Matter of the Use of N11 Codes and Other Abbreviated Dialing Arrangements, CC Docket No. 92-105, FCC 97-51, 12 F.C.C.R. 5572 (February 19, 1997).

(8) 311 calls shall not be completed over the 911 network or use the 911 database.

(9) The 311 network shall not be used for commercial advertisements.

(10) To preserve the privacy of callers who wish to use the governmental entity's non-emergency service anonymously, a certificated telecommunications utility which uses Automatic Number Identification (ANI) service, Automatic Location Identification (ALI) service or other equivalent non-blockable information-gathering features for the provision of 311 service must establish a non-abbreviated phone number that will access the same non-emergency police and governmental services as the 311 service while honoring callers' call- and line-blocking preference. When publicizing the availability of the 311 service, the governmental entity must inform the public if its 311 service has caller or number identification features, and must publicize the availability of the non-abbreviated phone number that offers the same service with caller anonymity. When a certificated telecommunications utility uses Caller Identification (Caller ID) services or other equivalent features to provide 311 service, relevant provisions of the commission's substantive rules and of the Public Utility Regulatory Act apply.

(11) The commission shall have the authority to limit the use of 311 abbreviated dialing codes to applications that are found to be in the public interest.

(12) The commission shall have the authority to decide which governmental entity shall provide 311 service when there are conflicting requests for concurrent 311 service for the same geographic area, to the extent that negotiations between or among the affected governmental entities fail. The commission shall consider the following factors in determining conflicting requests for 311 service:

(A) the nature of the service(s), including but not limited to the proposed public education portion, to be provided by the governmental entity; and

(B) the potential magnitude of use of the requested 311 service (i.e., the number of residents served by the governmental entity and their potential frequency of access to the governmental agencies wishing to use the 311 service).

(13) When termination of 311 service is desired, the certificated telecommunications utility shall file a notice of termination with the commission that contains:

(A) proposed notice to the affected area of the termination of 311 service; and

(B) the program to educate the affected public of the termination of 311 service.

(14) The commission, after receiving the certificated telecommunications utility's proposed notice of termination of 311 service and approving the proposed notice through an administrative review, will cause the approved notice to be published in the *Texas Register*.

(f) **811 service**.

(1) **Scope and purpose.** This subsection applies to the assignment, provision, and termination of 811 service. Through this subsection, the commission implements the Federal Communications Commission's requirements in *Use of N11 Codes and Other Abbreviated Dialing Arrangements*, Sixth Report and Order, CC Docket No. 92-105, FCC 05-59 (Mar. 14, 2005), that designated 811 as the national abbreviated dialing code to be used by state One Call notification systems for providing advanced notice of excavation activities to underground facility operators in compliance with the Pipeline Safety Improvement Act of 2002. The commission intends to reduce the possibility of disruptions to underground facilities by implementing 811 service. Implementation of 811 service will facilitate advance notice by excavators of planned excavations to facility operators, allowing facility operators to mark and prepare their facilities before excavation.

(2) **Authority.** Authority for One Call Excavation Notification resides with the Texas Underground Facility Notification Corporation (doing business as One Call Board of Texas and referred to herein as TUFNG) pursuant to Chapter 251 of the Texas Utilities Code.

(3) **Customer Responsibility.** TUFNG is a customer of 811 service. Telecommunications providers whose 811 service is regulated by the commission may require TUFNG to provide 60-days written notice for any call center number additions or changes to ensure timely numbered translations by the 811 service providers.

(4) **Limitations of liability.** Telecommunications providers whose 811 service is regulated by the commission may limit their liability for the provision of 811 service through the inclusion of liability limitations in their tariffs. Liability for gross negligence or willful misconduct shall not be limited.

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§26.128. Telephone Directories.

(a) **Application.** The provisions of this section shall apply to all telephone directory providers to the extent outlined in this section. This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Regulatory Act (PURA) §52.154. For purposes of this section, the term "a private for-profit publisher" shall mean a publisher, other than a telecommunications utility or its affiliate, of a telephone directory that contains residential listings and that is distributed to the public at minimal or no cost.

(b) **Telephone directory requirements for all providers.** Any private for-profit publisher and any telecommunications utility or its affiliate that publishes a residential telephone directory shall comply with the following requirements:

(1) A telephone directory shall contain a listing of each toll-free and local telephone number for each of the following:

(A) state agencies;

(B) state public services; and

(C) elected state officials who represent all or part of the geographical area for which the directory contains listings.

(2) The directory shall include the information required in paragraph (1) of this subsection from the most current edition of the State of Texas Telephone Directory prepared and issued by the Department of Information Services and those modifications to the State of Texas Telephone Directory that are available upon request from the Department of Information Resources.

(3) All publishers shall contact the Department of Information Resources in writing to determine which issue of the State of Texas Telephone Directory is most current and to obtain the modifications referred to in paragraph (2) of this subsection. The Department of Information Resources shall respond within 30 days of receiving the request.

(4) The listings required by paragraph (1) of this subsection:

(A) may be located at the front of the directory or, if not located at the front of the directory, shall be referenced clearly on the inside page of the cover or on the first page following the cover before the main listing of residential and business telephone numbers;

(B) shall be labeled "GOVERNMENT OFFICES - STATE" in 24 point type;

(C) shall be bordered or shaded in such a way (on the three unbound sides with a border) that will distinguish the state listings from the other listings;

(D) shall be included in the directory at no cost to the agency or official;

(E) shall be in compliance with the categorization developed by the Records Management Interagency Coordinating Council. The categorization shall be available upon request from the Department of Information Resources. The listings shall be arranged in two ways:

(i) alphabetically by subject matter of state agencies; and

(ii) alphabetically by agency and public service name;

(F) shall include the telephone number for state government information: (512) 463-4630.

(c) **Private for-profit publisher.** Any private for-profit publisher that publishes a residential telephone directory shall include in the directory a prominently displayed toll-free number and Internet mail address, established by the commission, through which a person may order a form to request to be placed on the Texas no-call list in order to avoid unwanted telemarketing calls.

(d) **Additional requirement for telecommunications utilities or affiliates that publish telephone directories**.

(1) A telecommunications utility or an affiliate of that utility that publishes a business telephone directory that is distributed to the public shall publish a listing of each toll-free and local telephone number of each elected official who represents all or part of the geographical area for which the directory contains listings.

(2) A telecommunications utility or an affiliate of that utility that publishes and causes to be distributed to the public a residential or business telephone directory shall prominently list in the directory the following information: "The Specialized Telecommunications Assistance Program (STAP) provides financial assistance to help Texas residents with disabilities purchase basic specialized equipment or services needed to access the telephone network. For more information, contact the Texas Department of Assistive and Rehabilitative Services, the Office for Deaf and Hard of Hearing Services at (512) 407-3250 (Voice) or (512) 407-3251 (TTY) or www.dars.state.tx.us/dhhs/. This program is open to all individuals who are residents of Texas and have a disability."

(e) **Requirements for telecommunications utilities found to be dominant.** This subsection applies to any telecommunications utility found to be dominant as to local exchange telephone service or its affiliate that publishes a directory on behalf of such telecommunications utility.

(1) **Annual publication.** Telephone directories shall be published annually. Except for customers who request that information be unlisted, directories shall list the names, addresses, and telephone numbers of all customers receiving local phone service, including customers of other certificated telecommunications utilities (CTUs) in the geographic area covered by that directory. Numbers of pay telephones need not be listed.

(2) **Distribution.** Upon issuance, a copy of each directory shall be distributed at no charge for each customer access line served by the telecommunications utility in the geographic area covered by that directory and, if requested, one extra copy per customer access line shall be provided at no charge. Notwithstanding any other law, a telecommunications provider or telecommunications utility may publish on its website a telephone directory or directory listing instead of providing for general distribution to the public of printed directories or listings. A provider or utility that publishes a telephone directory or directory listing electronically shall provide a print or digital copy of the directory or listing to a customer on request. If a provider or utility chooses to publish its telephone directory or directory listings electronically, it shall notify its customers that the first print or digital copy requested by a customer in each calendar year will be provided at no charge to the customer. A printed or digital copy of each directory shall be furnished to the commission. A telecommunications utility shall also distribute copies of directories pursuant to any agreement reached with another CTU.

(3) **Front cover requirements**. The name of the telecommunications utility, an indication of the area included in the directory, and the month and the year of issue shall appear on the front cover. Information pertaining to emergency calls such as for the police and fire departments shall appear conspicuously in the front part of the directory pages.

(4) **Required instructions**. The directory shall contain instructions concerning:

(A) placing local and long distance calls on the network of the telecommunications utility for which the directory is issued;

(B) calls to the telecommunications utility's repair and directory assistance services, and locations; and

(C) telephone numbers of the business offices of the telecommunications utility as may be appropriate to the area served by the directory.

(5) **Sample long distance rates**. It shall also contain a section setting out sample long distance rates within the long distance service area, if any, on the network of the telecommunications utility for which the directory is issued, applicable at the time the directory is compiled for publication, with a clear statement that the published rates are effective as of the date of compilation.

(6) **Customer addresses**. At the customer's option the directory shall list either the customer's street address, a post office box number, or no address. A charge can be imposed upon those customers who desire more than one address listing.

(f) **References to other sections relating to directory notification.** The requirements of this section are in addition to the requirements referenced in paragraphs (1) - (4) of this subsection, or any other applicable section in this title. The applicability of each of the sections referenced in paragraphs (1) - (4) of this subsection is unaffected by the inclusion of the reference in this subsection.

(1) Section 26.29 of this title (relating to Prepaid Local Telephone Service (PLTS)) concerning consumer education;

(2) Section 26.31 of this title (relating to Disclosures to Applicants and Customers) concerning information to customers;

(3) Section 26.121 of this title (relating to Privacy Issues) concerning notice of number delivery over 800, 888, and other toll-free prefixes and 900 services;

(4) Section 26.130 of this title (relating to Selection of Telecommunications Utilities) concerning notice of customer rights.

(g) **Additional requirements.** The following requirements apply to telecommunications utilities found to be dominant as to local exchange telephone service or its affiliate that publishes a directory on behalf of such telecommunications utility.

(1) **Directory assistance.** Each telecommunications utility shall list each customer with its directory assistance within 72 hours after service connection (except those numbers excluded from listing in subsection (e)(1) of this section) in order that the directory assistance operators can provide the requested telephone numbers based on customer names and addresses.

(2) **Non-assigned numbers.** All non-assigned telephone numbers in central offices serving more than 300 customer access lines shall be intercepted unless otherwise approved by the commission.

(3) **Disconnected numbers.** Disconnected residence telephone numbers shall not be reassigned for 30 days and disconnected business numbers shall not be reassigned, unless requested by the customer, for 30 days or the life of the directory, whichever is longer, unless no other numbers are available to provide service to new customers.

(4) **Incorrect listings.** If a customer's number is incorrectly listed in the directory and if the incorrect number is a working number and if the customer to whom the incorrect number is assigned requests, the number of the customer to whom the incorrect number is assigned shall be changed at no charge. If the incorrect number is not a working number and is a usable number, the customer's number shall be changed to the listed number at no charge if requested.

(5) **Changing telephone numbers to a group of customers.** When additions or changes in plant or changes to any other CTU's operations necessitate changing telephone numbers to a group of customers, at least 30 days' written notice shall be given to all customers so affected even though the addition or changes may be coincident with a directory issue.

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§26.129. Standards for Access to Provide Telecommunications Services at Tenant Request.

(a) **Purpose.** The purpose of this section is to implement Public Utility Regulatory Act (PURA) §§54.259, 54.260, and 54.261 regarding the non-discriminatory treatment of a telecommunications utility by the property owner upon a tenant's request for telecommunications services.

(b) **Application**.
- (1) This section applies to the following entities:
  - (A) "Telecommunications utilities" or "telecommunications utility" as defined in PURA §51.002(11), that hold a consent, franchise, or permit as determined to be the appropriate grants of authority by the municipality and hold a certificate if required by PURA;
  - (B) Public or private property owners of commercial property and the property owner's authorized representative(s); and
  - (C) Public or private property owners of commercially operated residential property with four or more dwelling units and the property owner's authorized representative(s).
- (2) This section does not apply to institutions of higher education as set forth by PURA §54.259(b).

(c) **Definitions.** The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.
- (1) **Conduit** – A pipe installed on the property, in a building between floors, attached to walls, between buildings, located in the ceiling or floor space of a building, located on a customer's premise, or from a public right of way into a property for the purposes of containing and protecting cable.
- (2) **Property** – A building or buildings that are under common ownership and which are located on a single tract of land or tracts of land that are adjoining or would be in the absence of streets or other public rights-of-ways.
- (3) **Property owner** – The owner of the property or its authorized representative(s).
- (4) **Requesting carrier** – A telecommunications utility seeking access to space on the property for the purpose of providing telecommunications services to one or more tenants who have requested such services.
- (5) **Space** – Area of the property for which access is being requested by the requesting carrier, which will be used to install the telecommunications equipment needed to provide telecommunications services to a requesting tenant on the property. Space includes conduit and may be located in or on the rooftop of a building or buildings on the property.
- (6) **Telecommunications equipment** – The equipment installed or used by the requesting carrier to provide telecommunications services to a requesting tenant.
- (7) **Tenant** – Any occupant of a building or buildings on the property under the terms of a lease with the property owner which has a remaining term of more than six months and who is not subject to filed bona fide eviction proceedings under such lease with the property owner, or an authorized subtenant of such occupant whose occupancy is subject to the terms of the primary lease which has a remaining term of more than six months.

(d) **Rights of parties.**
- (1) **Tenant's right to choose requesting carrier.** A tenant is entitled to choose the provider of its telecommunications services.
- (2) **Property owner's rights to manage access**. The requirements of this subsection are not intended to eliminate or restrict the property owner's rights to manage access to public or private property pursuant to PURA §§54.259, 54.260, and 54.261.
  - (A) A property owner may:
    - (i) impose a condition on the requesting carrier that is reasonably necessary to protect:
      - (I) the safety, security, appearance, and condition of the property; and

(II) the safety and convenience of other persons;

(ii) impose a reasonable limitation on the time at which the requesting carrier may have access to the property to install telecommunications equipment;

(iii) impose a reasonable limitation on the number of such requesting carriers that have access to the property, if the property owner can demonstrate a space constraint that requires the limitation;

(iv) require a requesting carrier to agree to indemnify the property owner for damage caused installing, operating, or removing telecommunications equipment;

(v) require a tenant or requesting carrier to bear the entire cost of installing, operating, or removing telecommunications equipment; and

(vi) require requesting carrier to pay compensation that is reasonable and nondiscriminatory among such telecommunications utilities.

(B) A property owner may not:

(i) prevent the requesting carrier from installing telecommunications equipment on the property upon a tenant request;

(ii) interfere with the requesting carrier's installation of telecommunications equipment on the property upon a tenant request;

(iii) discriminate against such requesting carrier regarding installation, terms, or compensation of telecommunications equipment to a tenant on the property;

(iv) demand or accept an unreasonable payment of any kind from a tenant or the requesting carrier for allowing the requesting carrier on or in the property; or

(v) discriminate in favor of or against a tenant in any manner, including rental charge discrimination, based on the identity of a telecommunications utility from which a tenant receives telecommunications services.

(3) **Requesting carrier's right to access.**

(A) Upon a tenant request, the requesting carrier has the right to install telecommunications equipment on the property in order to provide telecommunications services to the requesting tenant:

(i) for a period no longer than the remaining term of the requesting tenant's lease unless otherwise agreed to by the requesting carrier and the property owner. Should the requesting tenant's lease renew, the agreement between the requesting carrier and the property owner automatically continues, without the need for renegotiation, for the term of the requesting tenant's renewal;

(ii) without interference from the property owner, except as provided in this subsection; and

(iii) at terms, conditions, and compensation rates which are non-discriminatory.

(B) The requesting carrier shall comply with all applicable federal, state, and local codes and standards, *e.g.*, fire codes, electrical codes, safety codes, building codes, elevator codes.

(4) **Restriction on exclusive agreement.** A telecommunications utility shall not enter into an agreement, contract, pact, understanding or other like arrangement with the property owner to be the sole or exclusive provider of telecommunications services to actual or prospective tenants on the property.

(e) **Procedures upon tenant request.**

(1) **Tour of property.**

(A) Upon receiving a request for telecommunications services from a tenant, but prior to or concurrently with providing the property owner with notice of intent to install telecommunications equipment as described in paragraph (3) of this subsection, the requesting carrier may request, in writing, a tour of the property to determine an appropriate location for

the telecommunications equipment needed to provide the telecommunications services requested by such tenant. This request shall identify the requesting tenant and be sent by certified mail, return receipt requested to the property's on-site manager, or designee, and to the person identified in the tenant's lease to receive notices.

(B) The property owner shall provide such property tour within ten business days of receipt of the requesting carrier's written request.

(C) The requesting carrier and the property owner may agree, in writing, to extend the timelines prescribed by this subsection.

(2) **Request for technical drawings.**

(A) In its written request for a tour of the property, the requesting carrier may request that the property owner provide computer aided design (CAD) drawings or similarly detailed drawings of the mechanical room(s), risers and other common spaces, if available, in order to assist the requesting carrier in developing plans and specifications for placement of telecommunications equipment.

(B) Such drawings should be provided to the requesting carrier, within ten business days of the property owner's receipt of the requesting carrier's written request. The requesting carrier will bear the reasonable actual cost of providing the requested drawings.

(C) The requesting carrier and the property owner may agree, in writing, to extend the timelines prescribed by this subsection.

(3) **Notice of intent to install telecommunications equipment.**

(A) Upon receiving a request for telecommunications services from a tenant, the requesting carrier shall notify the property owner not fewer than 30 calendar days before the proposed date on which installation of telecommunications equipment needed to provide the telecommunications services requested by a tenant is to commence.

(B) Such notice shall be sent by certified mail, return receipt requested, to the property's on-site manager, or designee, and to the person identified in the tenant's lease to receive notices.

(C) The requesting carrier shall include, but is not limited to, the following in its notice of intent:

(i) the identity of the requesting tenant;

(ii) the property address and building number (if applicable);

(iii) the proposed timeline for the installation of telecommunications equipment;

(iv) the type of telecommunications equipment to be installed;

(v) the proposed location, space requirements, proposed engineering drawings, and other specifications of the telecommunications equipment;

(vi) the conduit requirements, if any; and

(vii) a copy of PURA §§54.259, 54.260, and 54.261 and this section (Substantive Rule §26.129).

(D) The requesting carrier and the property owner may agree, in writing, to extend the timelines prescribed by this subsection.

(f) **Requirement to negotiate for 30 days.**

(1) Upon receipt of the requesting carrier's notice of intent to install telecommunications equipment, the property owner and the requesting carrier shall attempt to reach a mutually acceptable agreement regarding the installation of the requesting carrier's telecommunications equipment and reasonable compensation due the property owner as a result of such installation.

(2) If such an agreement is not reached within 30 calendar days of the property owner's receipt of the requesting carrier's notice of intent, either party may file for resolution pursuant to subsection (i) of this section.

(3) The requesting carrier and the property owner may agree, in writing, to extend the period of negotiation prescribed by this subsection.

(g) **Parameters for installation of telecommunications equipment.** The property owner shall not deny the requesting carrier access to space, except due to inadequate space or safety concerns.

(1) **Inadequate space.**

(A) Property owner's denial due to inadequate space. The property owner may deny access to space if it does so within ten business days of its receipt of the requesting carrier's notice of intent to install telecommunications equipment, where the space and/or conduit required for installation is not sufficient to accommodate the requesting carrier's request.

(B) Demonstration of inadequate space.

(i) In the event the property owner denies access to space, the property owner shall demonstrate that there is insufficient space and/or conduit to accommodate the requesting carrier's request for space. The property owner shall allow the requesting carrier to inspect the space and/or conduit to which it is denied access; or it may utilize any other method of proof mutually agreed upon by the property owner and the requesting carrier.

(ii) Such demonstration shall be completed within ten business days of the requesting carrier's receipt of the property owner's denial.

(iii) Following such demonstration or other agreed upon method of proof, the requesting carrier shall have ten business days to dispute the property owner's assertion that a space limitation exists by pursuing resolution pursuant to subsection (i) of this section.

(C) The requesting carrier and the property owner may agree, in writing, to extend the timelines prescribed by this subsection.

(2) **Safety concerns.**

(A) Property owner's denial due to safety concern. The property owner may deny access to space if it does so within ten business days of its receipt of the requesting carrier's notice of intent to install telecommunications equipment, where the installation of the requesting carrier's telecommunications equipment would cause an unreasonable circumstance that would compromise the safety of the property and/or persons on the property.

(B) Demonstration of safety concern.

(i) In the event the property owner denies access to space, the property owner shall demonstrate that an unreasonable safety hazard that requires the denial of access to space exists. The property owner shall specify the alleged safety hazard and cite any applicable codes and/or standards. The property owner shall allow the requesting carrier to inspect the space and/or conduit to which it is denied access, or it may utilize any other method of proof mutually agreed upon by the property owner and the requesting carrier.

(ii) Such demonstration shall be completed within ten business days of the requesting carrier's receipt of the property owner's denial.

(iii) Following such demonstration or other agreed upon method of proof, the requesting carrier shall have ten business days to dispute the property owner's assertion that a safety hazard exists by pursuing resolution pursuant to subsection (i) of this section.

(C) The requesting carrier and the property owner may agree, in writing, to extend the timelines prescribed by this subsection.

(h) **Parameters for determining reasonable compensation for access.**

(1) The property owner and the requesting carrier shall attempt to reach a mutually acceptable agreement regarding reasonable and non-discriminatory compensation due the property owner as a result of the requesting carrier's installation of telecommunications equipment required to provide telecommunications services to a requesting tenant.

(2) The property owner shall not impose a fee on the requesting carrier unrelated to the requesting carrier's usage of space and/or provision of telecommunications services to a requesting tenant, except as provided by agreement of the property owner and the requesting carrier.

(3) The property owner and the requesting carrier shall negotiate terms and conditions concerning the removal of the requesting carrier's telecommunications equipment upon the departure of a tenant served by such requesting carrier or the end of the service agreement between a tenant and the requesting carrier.

(4) The property owner may require a security deposit not to exceed an amount equal to one month of fees or rents as determined by the agreement between the requesting carrier and the property owner. The requesting carrier and property owner may agree, in writing, to a security deposit of a differing amount than prescribed by this subsection.

(i) **Failure to reach negotiated agreement.**

(1) **Alternative Dispute Resolution.** As an alternative to petitioning the commission for resolution of a dispute, upon agreement of both parties, parties may voluntarily submit any controversy or claim under this section to settlement by alternative dispute resolution. This alternative dispute resolution shall be conducted under the alternative dispute resolution procedures of the Texas Government Code, Administrative Procedure Act, Chapter 2009, and the Texas Civil Practice and Remedies Code, Chapter 154.

(2) **Petition to commission for resolution of dispute.** If a mutually acceptable agreement regarding the installation of the requesting carrier's telecommunications equipment, the reasonable compensation due the property owner as a result of such installation, or other disputed issues is not reached within 30 calendar days of the property owner's receipt of the requesting carrier's notice of intent to install telecommunications equipment, either the property owner or the requesting carrier may petition the commission for resolution. The petition shall include proof of the requesting carrier's proper service of notice of intent to the property owner in the form of an affidavit and attached copy of return receipt.

(3) **Types of disputes and information required for each.**

(A) Installation dispute.

(i) The property owner may deny access consistent with subsection (g) of this section.

(ii) The property owner and the requesting carrier shall each provide the commission with information specifying the space or safety related installation dispute(s) that is preventing a negotiated agreement.

(iii) The property owner and the requesting carrier shall each provide the commission with information supporting its position in the dispute(s).

(B) Reasonable compensation dispute.

(i) The property owner shall provide the commission with the amount of compensation being sought and the basis for such claim, including information supporting the factors listed in clause (iii) of this subparagraph.

(ii) The requesting carrier shall provide the commission with information supporting the amount of compensation it deems reasonable to compensate the property owner for installation of its telecommunications equipment.

(iii) In determining a reasonable amount of compensation due the property owner for installation of the requesting carrier's telecommunications equipment, the commission may consider, but is not limited to, the following:

(I) the location and amount of space occupied by installation of the requesting carrier's telecommunications equipment;

(II) evidence that the property owner has a specific alternative use for any space which would be occupied by the requesting carrier's telecommunications

equipment and which would result in a specific quantifiable loss to the property owner;

(III) the value of the property before and after the installation of the requesting carrier's telecommunications equipment and the methods used to determine such values;

(IV) possible interference of the requesting carrier's telecommunications equipment with the use and occupancy of the property which would cause a decrease in the rental or resale value of the property;

(V) actual costs incurred by the property owner directly related to installation of the requesting carrier's telecommunications equipment;

(VI) the market rate for similar space used for installation of telecommunications equipment in a similar property; and

(VII) the market rate for tenant leaseable space in the property or a similar property.

(C) Other disputed issues.

(i) The property owner and the requesting carrier shall each provide the commission with information specifying any other dispute(s) preventing a negotiated agreement.

(ii) The property owner and the requesting carrier shall each provide the commission with information supporting its position regarding these other dispute(s).

(4) **Procedure.**

(A) Upon the proper filing of a petition, as set forth in paragraph (1) of this subsection, the commission may proceed to resolution of a dispute pursuant to the commission's procedural rules as set forth in Chapter 22 of this title (relating to Practice and Procedure).

(B) In addition to the requirements set forth in paragraph (1) of this subsection, all petitions shall comply with the requirements of Chapter 22, Subchapter D of this title (relating to Notice) and Chapter 22, Subchapter E of this title (relating to Pleadings and Other Documents).

(C) The commission may grant interim relief, subject to true-up, so as not to impair or delay, the right of the requesting carrier to install, maintain, and remove its telecommunications equipment, or to provide telecommunications services to a requesting tenant, during the pendency of the proceeding.

(j) **Administrative penalties.** The provisions set forth in §22.246 of this title (relating to Administrative Penalties) shall apply to any violation of this section whether by a property owner, property manager, or telecommunications utility.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter F. REGULATION OF TELECOMMUNICATIONS SERVICE.

§26.130. Selection of Telecommunications Utilities.

(a) **Purpose and Application.**

(1) **Purpose.** The provisions of this section are intended to ensure that all customers in this state are protected from an unauthorized change in a customer's local or long-distance telecommunications utility.

(2) **Application.** This section, including any references in this section to requirements in 47 Code of Federal Regulations (C.F.R.) Subpart K (entitled "Changing Long Distance Service"), applies to all "telecommunications utilities," as that term is defined in §26.5 of this title (relating to Definitions). This section does not apply to an unauthorized charge unrelated to a change in preferred telecommunications utility which is addressed in §26.32 of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming")).

(b) **Definitions.** The following words and terms when used in this section shall have the following meanings unless the context indicates otherwise:

(1) **Authorized telecommunications utility** — Any telecommunications utility that submits a change request, after obtaining customer authorization with verification, in accordance with the requirements of this section.

(2) **Customer** — Any person, including the person's spouse, in whose name telephone service is billed, including individuals, governmental units at all levels of government, corporate entities, and any other entity with legal capacity to request a change in local service and/or telecommunications utilities.

(3) **Executing telecommunications utility** — Any telecommunications utility that effects a request that a customer's preferred telecommunications utility be changed. A telecommunications utility may be treated as an executing telecommunications utility, however, if it is responsible for any unreasonable delays in the execution of telecommunications utility changes or for the execution of unauthorized telecommunications utility changes, including fraudulent authorizations.

(4) **Submitting telecommunications utility** — Any telecommunications utility that requests on behalf of a customer that the customer's preferred telecommunications utility be changed.

(5) **Unauthorized telecommunications utility** — Any telecommunications utility that submits a change request that is not in accordance with the requirements of this section.

(c) **Changes in preferred telecommunications utility.**

(1) **Changes by a telecommunications utility.** No telecommunications utility shall submit or execute a change on the behalf of a customer in the customer's selection of a provider of telecommunications service except in accordance with this section. Before a change order is processed by the executing telecommunications utility, the submitting telecommunications utility must obtain authorization from the customer that such change is desired for each affected telephone line(s) and ensure that verification of the authorization is obtained in accordance with 47 C.F.R. Subpart K. In the case of a change by written solicitation, the submitting telecommunications utility must obtain verification as specified in 47 C.F.R. Subpart K, and subsection (d) of this section, relating to "Letters of Agency." A change order must be verified by one of the following methods:

(A) Written or electronically signed authorization from the customer in a form that meets the requirements of subsection (d) of this section. A customer shall be provided the option of using another authorization method in lieu of an electronically signed authorization.

(B) Electronic authorization placed from the telephone number which is the subject of the change order except in exchanges where automatic recording of the automatic number identification (ANI) from the local switching system is not technically possible. The submitting telecommunications utility must:

(i) ensure that the electronic authorization confirms the information described in subsection (d)(3) of this section; and

(ii) establish one or more toll-free telephone numbers exclusively for the purpose of verifying the change so that a customer calling toll-free number(s) will reach a voice response unit or similar mechanism that records the required information regarding the change and automatically records the ANI from the local switching system.

(C) Oral authorization by the customer for the change that meets the following requirements:

(i) The customer's authorization shall be given to an appropriately qualified and independent third party that obtains appropriate verification data including at a minimum, but not limited to, the customer's month and year of birth, mother's maiden name, or the last four digits of the customer's social security number. A corporation or partnership may provide its federal Employer Identification Number, or last six digits thereof, and the name and job title of the authorized representative for the corporation or partnership to satisfy this subparagraph.

(ii) The customer's authorization and the customer's verification of authorization shall be electronically recorded in their entirety on audio tape, a wave sound file, or other recording device that is compatible with the commission's equipment.

(iii) The recordings shall be dated and include clear and conspicuous confirmation that the customer authorized the change in telephone service provider.

(iv) The third party verification shall elicit, at a minimum, the identity of the customer, confirmation that the person on the call is authorized to make the change in service, the name(s) of the telecommunications utilities affected by the change (not including the name of the displaced carrier), the telephone number(s) to be switched, and the type of service involved. The third party verifier shall not market or advertise the telecommunications utility's services by providing additional information, including information regarding preferred carrier freeze procedures.

(v) The third party verification shall be conducted in the same language used in the sales transaction.

(vi) Automated systems shall provide customers the option of speaking with a live person at any time during the call.

(vii) A telecommunications utility or its sales representative initiating a three-way call or a call through an automated verification system shall drop off the call once a three-way connection with the third party verifier has been established unless:

(I) the telecommunications utility files sworn written certification with the commission that the sales representative is unable to drop off the sales call after initiating a third party verification. Such certification should provide sufficient information as to the reason(s) for the inability of the sales agent to drop off the line after the third party verification is initiated. The carrier shall be exempt from this requirement for a period of two years from the date the certification was filed with the commission;

(II) telecommunications utilities that wish to extend their exemption from this clause must, before the end of the two-year period, and every two years thereafter, recertify to the commission the utility's continued inability to comply with this clause.

(viii) The third party verification shall immediately terminate if the sales agent of a telecommunications utility that has filed a sworn written certification in

accordance with clause (vii) of this subparagraph responds to a customer inquiry or speaks after third party verification has begun.

(ix) The independent third party shall:

(I) not be owned, managed, directed or controlled by the telecommunications utility or the telecommunications utility's marketing agent;

(II) not have financial incentive to confirm change orders; and

(III) operate in a location physically separate from the telecommunications utility and the telecommunications utility's marketing agent.

(2) **Changes by customer request directly to the local exchange company.** If a customer requests a change in the customer's current preferred telecommunications utility by contacting the local exchange company directly, and that local exchange company is not the chosen carrier or affiliate of the chosen carrier, the verification requirements in paragraph (1) of this subsection do not apply. The customer's current local exchange company shall maintain a record of the customer's request for 24 months.

(d) **Letters of Agency (LOA).** A written or electronically signed authorization from a customer for a change of telecommunications utility shall use a letter of agency (LOA) as specified in this subsection:

(1) The LOA shall be a separate or easily separable document or located on a separate screen or webpage containing only the authorization and verification language described in paragraph (3) of this subsection for the sole purpose of authorizing the telecommunications utility to initiate a telecommunications utility change. The LOA must be fully completed, signed and dated by the customer requesting the telecommunications utility change. An LOA submitted with an electronically signed authorization shall include the consumer disclosures required by the *Electronic Signatures in Global and National Commerce Act* §101(c).

(2) The LOA shall not be combined with inducements of any kind on the same document, screen, or webpage except that the LOA may be combined with a check as specified in subparagraphs (A) and (B) of this paragraph:

(A) An LOA combined with a check may contain only the language set out in paragraph (3) of this subsection, and the necessary information to make the check a negotiable instrument.

(B) A check combined with an LOA shall not contain any promotional language or material but shall contain on the front and back of the check in easily readable, bold-faced type near the signature line, a notice similar in content to the following: "By signing this check, I am authorizing (name of the telecommunications utility) to be my new telephone service provider for (the type of service that will be provided)."

(3) LOA language.

(A) At a minimum, the LOA shall be clearly legible, printed in a text not smaller than 12-point type, and shall contain clear and unambiguous language that includes and confirms:

(i) the customer's billing name and address and each telephone number to be covered by the preferred telecommunications utility change order;

(ii) the decision to change preferred carrier from the current telecommunications utility to the new telecommunications utility;

(iii) that the customer designates (insert name of the new telecommunications utility) to act as the customer's agent for the preferred carrier change;

(iv) that the customer understands that only one preferred telecommunications utility may be designated for each type of service (local, intraLATA, and interLATA) for each telephone number. The LOA shall contain separate statements regarding those choices, although a separate LOA for each service is not required;

(v) that the customer understands that any preferred carrier selection the customer chooses may involve a one-time charge to the customer for changing the customer's preferred telecommunications utility and that the customer may consult with the carrier as to whether a fee applies to the change; and

(vi) appropriate verification data, including at a minimum, but not limited to, the customer's month and year of birth, mother's maiden name, or the last four digits of the customer's social security number. A corporation or partnership may provide a federal Employer Identification Number, or last six digits thereof, and the name and job title of the authorized representative of the corporation or partnership to satisfy the requirements of this subparagraph.

(B) Any telecommunications utility designated in a LOA as the customer's preferred and authorized telecommunications utility shall be the carrier directly setting rates for the customer.

(C) The following LOA form meets the requirements of this subsection. Other versions may be used, but shall comply with all of the requirements of this subsection.

Customer billing name:_____
Customer billing address: _____
Customer street address: _____
City, state, zip code: _____
Customer's month and year of birth, the customer's month and day of birth, mother's maiden name, or the last four digits of the customer's social security number: _____
_____

If applicable, name of individual legally authorized to act for customer:
_____
Relationship to customer: _____
Telephone number of individual authorized to act for customer:
_____
Only one telephone company may be designated as my preferred carrier for each type of service for each telephone number.

_____ By initialing here and signing below, I am authorizing (insert name of new telecommunications utility) to become my new telephone service provider for **local** telephone service. I authorize (insert name of new telecommunications utility) to act as my agent to make this change happen, and direct my (current telecommunications utility) to work with the new provider to make the change.

_____ By initialing here and signing below, I am authorizing (insert name of new telecommunications utility) to become my new telephone service provider in place of my (current telecommunications utility) for **local toll** telephone service. I authorize (insert name of new telecommunications utility) to act as my agent to make this change happen, and direct my (current telecommunications utility) to work with the new provider to make the change.

_____ By initialing here and signing below, I am authorizing (insert name of new telecommunications utility) to become my new telephone service provider in place of my (current telecommunications utility) for **long distance** telephone service. I authorize (insert name of new telecommunications utility) to act as my agent to make this change happen, and direct my (current telecommunications utility) to work with the new provider to make the change.

I understand that I may be required to pay a one-time charge to switch providers and may consult with the carrier as to whether the charge will apply. If I later wish to return to my current telephone company, I may be required to pay a reconnection charge. I also understand that my new telephone company may have different calling areas, rates, and charges than my current telephone company, and I am willing to be billed accordingly.

Telephone number(s) to be changed: _____

Initial here _____ if you are listing additional telephone numbers to be changed.

I have read and understand this Letter of Agency. I am at least eighteen years of age and legally authorized to change telephone companies for services to the telephone number(s) listed above.

Signed:_____ Date _____

(4) The LOA shall not require or suggest that a customer take some action in order to retain the customer's current telecommunications utility.

(5) If any portion of an LOA is translated into another language, then all portions of the LOA must be translated into that language. Every LOA must be translated into the same language as promotional materials, oral descriptions or instructions provided with the LOA.

(6) The submitting telecommunications utility shall submit a change order on behalf of a customer within 60 days after obtaining a written or electronically signed LOA from the customer except LOAs relating to multi-line and/or multi-location business customers that have entered into negotiated agreements with a telecommunications utility to add presubscribed lines to their business locations during the course of a term agreement shall be valid for the period specified in the term agreement.

(e) **Notification of alleged unauthorized change.**

(1) When a customer informs an executing telecommunications utility of an alleged unauthorized telecommunications utility change, the executing telecommunications utility

shall immediately notify both the authorized and alleged unauthorized telecommunications utility of the incident.

(2) Any telecommunications utility, executing, authorized, or alleged unauthorized, that is informed of an alleged unauthorized telecommunications utility change shall direct the customer to contact the Public Utility Commission of Texas for resolution of the complaint.

(3) The alleged unauthorized telecommunications utility shall remove all unpaid charges pending a determination of whether an unauthorized change occurred.

(4) The alleged unauthorized telecommunications utility may challenge a complainant's allegation of an unauthorized change by notifying the complainant in writing to file a complaint with the Public Utility Commission of Texas within 30 days after the customer's assertion of an unauthorized switch to the alleged unauthorized telecommunications utility. If the complainant does not file a complaint within 30 days, the unpaid charges may be reinstated.

(5) The alleged unauthorized telecommunications utility shall take all actions within its control to facilitate the customer's prompt return to the original telecommunications utility within three business days of the customer's request.

(6) The alleged unauthorized telecommunications utility shall also be liable to the customer for any charges assessed to change the customer from the authorized telecommunications utility to the alleged unauthorized telecommunications utility in addition to charges assessed for returning the customer to the authorized telecommunications utility.

(f) **Unauthorized changes.**

(1) **Responsibilities of the telecommunications utility that initiated the change.** If a customer's telecommunications utility is changed without verification consistent with this section, the telecommunications utility that initiated the unauthorized change shall:

(A) take all actions within its control to facilitate the customer's prompt return to the original telecommunications utility within three business days of the customer's request;

(B) pay all charges associated with returning the customer to the original telecommunications utility within five business days of the customer's request;

(C) provide all billing records to the original telecommunications utility related to the unauthorized change of services within ten business days of the customer's request;

(D) pay, within 30 business days of the customer's request, the original telecommunications utility any amount paid to it by the customer that would have been paid to the original telecommunications utility if the unauthorized change had not occurred;

(E) return to the customer within 30 business days of the customer's request:

(i) any amount paid by the customer for charges incurred during the first 30 days after the date of an unauthorized change; and

(ii) any amount paid by the customer after the first 30 days in excess of the charges that would have been charged if the unauthorized change had not occurred;

(F) remove all unpaid charges; and

(G) pay the original telecommunications utility for any billing and collection expenses incurred in collecting charges from the unauthorized telecommunications utility.

(2) **Responsibilities of the original telecommunications utility**. The original telecommunications utility shall:

(A) inform the telecommunications utility that initiated the unauthorized change of the amount that would have been charged for identical services if the unauthorized change had not occurred, within ten business days of the receipt of the billing records required under paragraph (1)(C) of this subsection;

(B) where possible, provide to the customer all benefits associated with the service, such as frequent flyer miles that would have been awarded had the unauthorized change not occurred, on receiving payment for service provided during the unauthorized change;

(C) maintain a record of customers that experienced an unauthorized change in telecommunications utilities that contains:

(i) the name of the telecommunications utility that initiated the unauthorized change;

(ii) the telephone number(s) affected by the unauthorized change;

(iii) the date the customer asked the telecommunications utility that made the unauthorized change to return the customer to the original telecommunications utility; and

(iv) the date the customer was returned to the original telecommunications utility; and

(D) not bill the customer for any charges incurred during the first 30 days after the unauthorized change, but may bill the customer for unpaid charges incurred after the first 30 days based on what it would have charged if the unauthorized change had not occurred.

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

(1) Each telecommunications utility shall make available to its customers the notice set out in paragraph (3) of this subsection.

(2) Each notice provided under paragraph (5)(A) of this subsection shall contain the name, address and telephone numbers where a customer can contact the telecommunications utility.

(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. 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) The customer notice requirements in paragraph (3) of this subsection may be combined with the notice requirements of §26.32(g)(1) and (2) of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming")) if all of the information required by each is in the combined notice.

(5) **Language, distribution and timing of notice**.

(A) Telecommunications utilities shall send the notice to new customers at the time service is initiated, and upon customer request.

(B) Each telecommunications utility shall print the notice in the white pages of its telephone directories, beginning with any directories published 30 days after the effective date of this section and thereafter. The notice that appears in the directory is not required to list the information contained in paragraph (2) of this subsection.

(C) The notice shall be in both English and Spanish as necessary to adequately inform the customer. The commission may exempt a telecommunications utility from the Spanish requirement if the telecommunications utility shows that 10% or fewer of its customers are exclusively Spanish-speaking, and that the telecommunications utility will notify all customers through a statement in both English and Spanish that the information is available in Spanish by mail from the telecommunications utility or at the utility's offices.

(h) **Compliance and enforcement.**

(1) **Records of customer verifications and unauthorized changes.**

(A) The submitting telecommunications utility must maintain records of all change orders, including verifications of customer authorizations, for a period of 24 months and shall provide such records to the customer, if the customer challenges the change.

(B) A telecommunications utility shall provide a copy of records maintained under the requirements of subsections (c), (d), and (f)(2)(C) of this section to the commission staff on or before the 21st calendar day of staff's request.

(C) The proof of authorization and verification of authorization as required from the alleged unauthorized telecommunications utility pursuant to subparagraph (B) of this paragraph and paragraph (2)(A) of subsection (l) must establish a valid authorized telecommunications utility change as defined by subsections (c) and (d) of this section. Failure by the alleged unauthorized telecommunications utility to timely submit a response that addresses the complainant's assertions, relating to an unauthorized change, within the time specified in subparagraph (B) of this paragraph or paragraph (2) of subsection (l) establishes a violation of this section.

(2) **Administrative penalties.** If the commission finds that a telecommunications utility is in violation of this section, the commission shall order the utility to take corrective action as necessary, and the

utility may be subject to administrative penalties pursuant to the Public Utility Regulatory Act (PURA) §15.023 and §15.024.

(3) **Evidence.** Evidence supplied by the customer that meets the standards set out in Texas Government Code §2001.081, including, but not limited to, one or more affidavits from a customer challenging the change, is admissible in a proceeding to enforce the provisions of this section.

(4) **Certificate revocation.** The commission may suspend, restrict, deny, or revoke the registration or certificate, including an amended certificate, of a telecommunications utility, thereby denying the telecommunications utility the right to provide service in this state, pursuant to the provisions of either PURA §17.052 or PURA §55.306.

(5) **Coordination with the office of the attorney general.** The commission shall coordinate its enforcement efforts regarding the prosecution of fraudulent, unfair, misleading, deceptive, and anticompetitive business practices with the Office of the Attorney General in order to ensure consistent treatment of specific alleged violations.

(i) **Notice of identity of a customer's telecommunications utility.** Any bill for telecommunications services must contain the following information in easily-read, bold type in each bill sent to a customer. Where charges for multiple lines are included in a single bill, this information must appear on the first page of the bill if possible or displayed prominently elsewhere in the bill:

(1) The name and telephone number of the telecommunications utility providing local exchange service if the bill is for local exchange service.

(2) The name and telephone number of the primary interexchange carrier if the bill is for interexchange service.

(3) The name and telephone number of the local exchange and interexchange providers if the local exchange provider is billing for the interexchange carrier. The commission may, for good cause, waive this requirement in exchanges served by incumbent local exchange companies serving 31,000 access lines or less.

(4) A statement that customers who believe they have been slammed may contact 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. This statement may be combined with the statement requirements of §26.32(g)(4) of this title if all of the information required by each is in the combined statement.

(j) **Preferred telecommunications utility freezes.**

(1) **Purpose**. A preferred telecommunications utility freeze ("freeze") prevents a change in a customer's preferred telecommunications utility selection unless the customer gives consent to the local exchange company that implemented the freeze.

(2) **Nondiscrimination.** All local exchange companies that offer freezes shall offer freezes on a nondiscriminatory basis to all customers regardless of the customer's telecommunications utility selection except for local telephone service.

(3) **Type of service**. Customer information on freezes shall clearly distinguish between intraLATA and interLATA telecommunications services. The local exchange company offering a freeze shall obtain separate authorization for each service for which a freeze is requested.

(4) **Freeze information**. All information provided by a telecommunications utility about freezes shall have the sole purpose of educating customers and providing information in a neutral way to allow the customer to make an informed decision, and shall not market or induce the customer to request a freeze. The freeze information provided to customers shall include:

(A) a clear, neutral explanation of what a freeze is and what services are subject to a freeze;

(B) instructions on lifting a freeze that make it clear that these steps are in addition to required verification for a change in preferred telecommunications utility;

(C) an explanation that the customer will be unable to make a change in telecommunications utility selection unless the customer lifts the freeze, including information describing the specific procedures by which the freeze may be lifted; and

(D) a statement that there is no charge to the customer to impose or lift a freeze.

(5) **Freeze verification**. A local exchange company shall not implement a freeze unless the customer's request is verified using one of the following procedures:

(A) A written and signed or electronically signed authorization that meets the requirements of paragraph (6) of this subsection.

(B) An electronic authorization placed from the telephone number on which a freeze is to be imposed. The electronic authorization shall confirm appropriate verification data including, but not limited to, the customer's month and year of birth, the customer's month and day of birth mother's maiden name, or the last four digits of the customer's social security number and the information required in paragraph (6)(G) of this subsection. A corporation or partnership may provide a federal Employer Identification Number, or last six digits thereof, and the name and job title of the authorized representative of the corporation or partnership to satisfy the requirements of this subparagraph. The local exchange company shall establish one or more toll-free telephone numbers exclusively for this purpose. Calls to the number(s) will connect the customer to a voice response unit or similar mechanism that records the information including the originating ANI.

(C) An appropriately qualified independent third party obtains the customer's oral authorization to submit the freeze that includes and confirms appropriate verification data as required by subparagraph (B) of this paragraph. This shall include clear and conspicuous confirmation that the customer authorized a freeze. The independent third party shall:

(i) not be owned, managed, or directly controlled by the local exchange company or the local exchange company's marketing agent;

(ii) not have financial incentive to confirm freeze requests; and

(iii) operate in a location physically separate from the local exchange company and its marketing agent.

(D) Any other method approved by Federal Communications Commission rule or order granting a waiver.

(6) **Written authorization**. A written freeze authorization shall:

(A) be a separate or easily separable document with the sole purpose of imposing a freeze;

(B) be signed and dated by the customer;

(C) not be combined with inducements of any kind;

(D) be completely translated into another language if any portion is translated;

(E) be translated into the same language as any educational materials, oral descriptions, or instructions provided with the written freeze authorization;

(F) be printed with readable type of sufficient size to be clearly legible; and

(G) contain clear and unambiguous language that confirms:

(i) the customer's name, address, and telephone number(s) to be covered by the freeze;

(ii) the decision to impose a freeze on the telephone number(s) and the particular service with a separate statement for each service to be frozen;

(iii) that the customer understands that a change in telecommunications utility cannot be made unless the customer lifts the freeze; and

(iv) that the customer understands that there is no charge for imposing or lifting a freeze.

(7) **Lifting freezes**. A local exchange company that executes a freeze request shall allow customers to lift a freeze by:

(A) written and signed or electronically signed authorization stating the customer's intent to lift a freeze;

(B) oral authorization stating an intent to lift a freeze confirmed by the local exchange company with appropriate confirmation verification data as indicated in paragraph (5)(B) of this subsection;

(C) a three-way conference call with the local exchange company, the telecommunications utility that will provide the service, and the customer with appropriate confirmation verification data from the customer as indicated in paragraph (5)(B) of this subsection; or

(D) any other method approved by Federal Communications Commission rule or order granting a waiver.

(8) **No customer charge.** The customer shall not be charged for imposing or lifting a freeze.

(9) **Local service freeze prohibition.** A local exchange company shall not impose a freeze on local telephone service.

(10) **Marketing prohibition.** A local exchange company shall not initiate any marketing of its services during the process of implementing or lifting a freeze.

(11) **Freeze records retention**. A local exchange company shall maintain records of all freezes and verifications for a period of 24 months and shall provide these records to customers and to the commission staff upon request.

(12) **Suggested freeze information language.** Telecommunications utilities that inform customers about freezes may use the following language. Other versions may be used, but shall comply with all of the requirements of paragraph (4) of this subsection.

Preferred Telephone Company Freeze

A preferred telephone company freeze ("freeze") prevents a change in a customer's telephone provider unless you consent by contacting the local telephone company. A freeze can protect you against "slamming" (switching your telephone service without your permission). You can impose a freeze on your local toll, long distance service, or both. To impose a freeze, contact your local telephone company. The local telephone company must verify your freeze request by getting your written and signed authorization, electronic authorization, or through an independent third party verification. You will not be able to change your telephone provider without lifting the freeze. You may lift a freeze by giving your local telephone company a written and signed request or by calling your local telephone company with your request. You must do this in addition to providing the verification information that your new telephone provider will request. There is no charge to the customer for imposing or lifting a freeze.

(13) **Suggested freeze authorization form.** The following form is recommended for written authorization from a customer requesting a freeze. Other versions may be used, but shall comply with all of the requirements of paragraph (6) of this subsection.

Freeze Authorization Form

Customer billing name: _____

Customer service address: _____

City, state, zip code: _____

Customer mailing address: _____

City, state, zip code: _____
Telephone number (1): _____
Telephone number (2): _____
Telephone number (3): _____
Customer's month and year of birth, the customer's month and day of birth, mother's maiden name, or last four digits of the customer's social security number: _____

The purpose of a freeze is to prevent a change in your telephone company without your consent. A freeze is a protection against "slamming" (switching your telephone company without your permission). You can impose a freeze on either your local toll or long distance service provider, or both. If you want a freeze, you must contact (name of local telephone company) at (phone number) to lift the freeze before you can change your service provider. You may add or lift a freeze at any time at no charge.

Please complete the following for each service for which you are requesting a freeze:

I authorize a freeze for the telephone number(s) listed above for **local toll** service.
Current preferred local toll company: _____
Customer's signature: _____
Date: _____
Customer's printed name: _____

I authorize a freeze for the telephone number(s) listed above for **long distance** service.
Current preferred long distance company: _____
Customer's signature: _____
Date: _____
Customer's printed name: _____

Mail this form to:
(Name of local telephone company)
(Address)
Or FAX to: (FAX number)

(14) **Suggested freeze lift form.** The following form is recommended for written authorization to lift a freeze. Other versions may be used, but shall comply with all of the requirements of paragraph (7) of this subsection.

Freeze Lift Form

Customer billing name: _____
Customer service address: _____
City, state, zip code: _____
Customer mailing address: _____
City, state, zip code: _____
Telephone number (1): _____
Telephone number (2): _____
Telephone number (3): _____

Customer's month and year of birth, the customer's month and day of birth, mother's maiden name, or last four digits of the customer's social security number: _____

Please complete the following for each service that you wish to lift a freeze:

I wish to remove a freeze for the telephone number(s) listed above for **local toll** service.
Current preferred local toll company: _____
Customer's signature: _____
Date: _____
Customer's printed name: _____

I wish to remove a freeze for the telephone number(s) listed above for long distance service.

Current preferred long distance company: _____
Customer's signature: _____
Date: _____
Customer's printed name: _____

Mail this form to:
(Name of local telephone company)
(Address)
Or FAX to: (FAX number)

(k) **Transferring customers from one telecommunications utility to another.**

(1) A telecommunications utility may acquire, through a sale or transfer, either part or all of another telecommunications utility's customer base without obtaining each customer's authorization and verification in accordance with subsection (c)(1) of this section, provided that the acquiring utility complies with this section. Any telecommunications utility that will acquire customers from another telecommunications utility that will no longer provide service due to acquisition, merger, bankruptcy or any other reason, shall provide notice to every affected customer. The notice shall be in a billing insert or separate mailing at least 30 days prior to the transfer of any customer. If legal or regulatory constraints prevent sending the notice at least 30 days prior to the transfer, the notice shall be sent promptly after all legal and regulatory conditions are met. The notice shall:

(A) identify the current and acquiring telecommunications utilities;

(B) explain why the customer will not be able to remain with the current telecommunications utility;

(C) explain that the customer has a choice of selecting a service provider and may select the acquiring telecommunications utility or any other telecommunications utility and that the customer may incur a charge if the customer selects another telecommunications utility;

(D) explain that if the customer wants another telecommunications utility, the customer should contact that telecommunications utility or the local telephone company;

(E) explain the time frame for the customer to make a selection and what will happen if the customer makes no selection;

(F) identify the effective date that customers will be transferred to the acquiring telecommunications utility;

(G) provide the rates and conditions of service of the acquiring telecommunications utility and how the customer will be notified of any changes;

(H) explain that the customer will not incur any charges associated with the transfer;

(I) explain whether the acquiring carrier will be responsible for handling complaints against the transferring carrier; and

(J) provide a toll-free telephone number for a customer to call for additional information.

(2) The acquiring telecommunications utility shall provide the Customer Protection Division (CPD) with a copy of the notice when it is sent to customers.

(l) **Complaints to the commission.** A customer may file a complaint with the commission's CPD against a telecommunications utility for any reasons related to the provisions of this section.

(1) **Customer complaint information.** CPD may request, at a minimum, the following information:

(A) the customer's name, address, and telephone number;

(B) a brief description of the facts of the complaint;

(C)a copy of the customer's and spouse's legal signature; and

(D) a copy of the most recent phone bill and any prior phone bill that shows the switch in carrier.

(2) **Telecommunications utility's response to complaint.** After review of a customer's complaint, CPD shall forward the complaint to the telecommunications utility. The telecommunications utility shall respond to CPD within 21 calendar days after CPD forwards the complaint. The telecommunications utility's response shall include the following:

(A) all documentation related to the authorization and verification used to switch the customer's service; and

(B) all corrective actions taken as required by subsection (f) of this section, if the switch in service was not verified in accordance with subsections (c) and (d) of this section.

(3) **CPD investigation.** CPD shall review all of the information related to the complaint and make a determination on whether or not the telecommunications utility complied with the requirements of this section. CPD shall inform the complainant and the alleged unauthorized telecommunications utility of the results of the investigation and identify any additional corrective actions that may be required. CPD shall also inform, if known, the authorized telecommunications utility if there was an unauthorized change in service.

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

(1) **Definitions.** The following words and terms, when used in this subsection, shall have the following meanings unless the context clearly indicates otherwise.

(A) Local service provider (LSP) — the certified telecommunications utility chosen by a customer to provide local exchange service to that customer.

(B) Old local service provider (old LSP) — The local service provider immediately preceding the change to a new local service provider.

(C) New local service provider (new LSP) — The local service provider from which the customer requests new service.

(D) Primary interexchange carrier (PIC) — the provider chosen by a customer to carry that customer's toll calls. For the purposes of this subsection, any reference to primary interexchange carrier refers to both interLATA and intraLATA toll carriers.

(E) Old primary interexchange carrier (old PIC) — The primary interexchange carrier immediately preceding the change to a new primary interexchange carrier.

(F) New primary interexchange carrier (new PIC) — The primary interexchange carrier from which the customer requests new service or continuing service after changing local service providers.

(G) Change execution — means the date the LSP initially has knowledge of the PIC or LSP change in the switch.

(2) **Contents and delivery of notice required by paragraphs (3) and (4) of this subsection.**

(A) Notice shall contain at least:

(i) the effective date of the change in the switch;
(ii) the customer's billing name, address, and number; and
(iii) any other information necessary to implement the change.

(B) If an LSP does not otherwise have the appropriate contact information for notifying a PIC, then the LSP's notification to the PIC shall be deemed complete upon delivery of the notice to the PIC's address, facsimile number or e-mail address listed in the appropriate Utility Directory maintained by the commission.

(3) **Notification requirements for change in PIC only.** The LSP shall notify the old PIC and the new PIC of the PIC change within five business days of the change execution.

(A) The new PIC shall initiate billing the customer for presubscribed services within five business days after receipt of such notice.

(B) The old PIC shall discontinue billing the customer for presubscribed services within five business days after receipt of such notice.

(4) **Notification requirements for change in LSP.**

(A) Requirement of the new LSP to notify the old LSP. Within five business days of the change execution, the new LSP shall notify the old LSP of the change in the customer's LSP.

(B) Requirement of the new LSP to notify the new PIC. Within five business days of the change execution, the new LSP shall notify the new PIC of the customer's selection of such PIC as the customer's PIC.

(C) Requirement of the old LSP to notify the old PIC. Within five business days of the old LSP's receipt of notice pursuant to subparagraph (A) of this paragraph, the old LSP shall notify the old PIC that the old LSP is no longer the customer's LSP.

(5) **Requirements of the new PIC to initiate billing customer.** If the new PIC receives notice pursuant to paragraph (4)(B) of this subsection, within five business days after receipt of such notice, the new PIC shall initiate billing the customer for presubscribed services.

(6) **Requirements of the old PIC to discontinue billing customer.** If the old PIC receives notice pursuant to paragraph (4)(C) of this subsection that the old LSP is no longer the customer's LSP, the old PIC shall discontinue billing the customer for presubscribed services within seven business days after receipt of such notice, unless the new LSP notifies the old PIC that it is the new PIC pursuant to paragraph (4)(B) of this subsection.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter F. REGULATION OF TELECOMMUNICATIONS SERVICE.

§26.131. Competitive Local Exchange Carrier (CLEC)-to-CLEC and CLEC-to-Incumbent Local Exchange Carrier (ILEC) Migration Guidelines.

(a) **Purpose.** The purpose of this section is to establish standardized procedures, general business rules, and privacy protocols governing end user or customer migrations between CLECs, or between a CLEC and an ILEC that serves 31,000 or more access lines in the state, to ensure that:

(1) customers can migrate from one CLEC to another or from a CLEC to an ILEC in a seamless manner without encountering abnormal delays, service interruptions, and cumbersome procedures;

(2) customers are not switched from one telecommunications provider to another without their permission pursuant to §26.130 of this title (relating to Selection of Telecommunications Utilities); and

(3) customers do not have unauthorized charges placed on their bills pursuant to §26.32 of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming")).

(b) **Application.** This section applies to all CLECs and to all ILECs with 31,000 or more access lines in the state. This section does not apply to Digital Subscriber Line (DSL) services, line sharing, or line splitting arrangements as defined by the Federal Communications Commission (FCC) or the commission, or to migrations resulting from a CLEC's exit from the Texas market or a major segment of the Texas market.

(c) **Terminology.** In this section, "CLEC" means a holder of either a certificate of operating authority (COA) or a service provider certificate of authority (SPCOA).

(d) **Migration guidelines**. All CLECs and applicable ILECs shall follow the *Texas CLEC-to-CLEC and CLEC-to-ILEC Migration Guidelines* when an end user or customer migrates from one CLEC to another or from a CLEC to an ILEC. These guidelines may only be changed through the rulemaking process.

Figure: 16 TAC §26.131(d)

§26.133. Business and Marketing Code of Conduct for Certificated Telecommunications Utilities (CTUs).

(a) **Purpose**. The purpose of this section is to establish a code of conduct in order to implement Public Utility Regulatory Act (PURA) §51.001 and §64.001 relating to fair business practices and safeguards against fraudulent, unfair, misleading, deceptive, or anticompetitive practices in order to ensure quality service and a competitive market.

(b) Application. This section applies to all certificated telecommunications utilities (CTUs), as defined in §26.5 of this title (relating to Definitions), and CTU employees. This section also applies to all authorized agents of the CTU. This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Regulatory Act (PURA) §52.154.

(c) **Communications**.

(1) A CTU employee or authorized agent shall conduct communications with competitors and competitors' end-user customers with the same degree of professionalism, courtesy, and efficiency as that performed on behalf of their employer and end-user customers.

(2) A CTU employee or authorized agent, while engaged in the installation of equipment or the rendering of services (including the processing of an order for the installation, repair or restoration of service, or engaged in the actual repair or restoration of service) on behalf of a competitor shall not make statements regarding the service of any competitor and shall not promote any of the CTU's services to the competitor's end-user customers.

(d) **Corporate advertising and marketing.**

(1) A CTU, CTU employee or authorized agent shall not engage in false, misleading or deceptive practices, advertising or marketing with respect to the offering of any telecommunications service.

(2) A CTU, CTU employee or authorized agent shall not falsely state or falsely imply that the services provided by the CTU on behalf of a competitor are superior when purchased directly from the CTU.

(3) A CTU, CTU employee or authorized agent shall not falsely state or falsely imply that the services offered by a competitor cannot be reliably rendered, or that the quality of service provided by a competitor is of a substandard nature.

(4) A CTU, CTU employee or authorized agent shall not falsely state nor falsely imply to any end-user customer that the continuation of any telecommunications service provided by the CTU is contingent upon ordering any other telecommunications service offered by the CTU. This section is not intended to prohibit a CTU from offering, or enforcing the terms of, any bundled or packaged service or any other form of pricing flexibility permitted by PURA and commission rules.

(e) **Information sharing and disclosure.**

(1) Pursuant to the federal Telecommunications Act §222(a), each CTU has a duty to protect the confidentiality of proprietary information of, and relating to, other CTUs.

(2) Pursuant to the federal Telecommunications Act §222(b), each CTU that receives or obtains proprietary information from another CTU for purposes of providing any telecommunications service shall use such information only for such purpose, and shall not use such information for its own marketing efforts or any other unauthorized purpose.

(f) **References to other Chapter 26 substantive rules.** The following commission rules also affect the conduct of CTU employees and authorized agents. All CTU employees and agents must be trained to comply with the specific substance of these rules which affect their employment responsibilities. Copies of specific commission rules shall be made available by the CTU to any employee or agent upon their request. The applicability of each of the following sections is unaffected by the reference in this section and does not relieve any CTU of its responsibility to abide by other applicable commission rules.

(1) Section 26.21 of this title (relating to General Provisions of Customer Service and Protection Rules);

(2) Section 26.31 of this title (relating to Disclosures to Applicants and Customers);

(3) Section 26.32 of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming"));

(4) Section 26.37 of this title (relating to Texas No-Call List); and

(5) Section 26.130 of this title (relating to Selection of Telecommunications Utilities).

(g) **Adoption and dissemination.**

(1) Every CTU or authorized agent shall formally adopt and implement all applicable provisions of this section as company policy, or modify existing company policy as needed to incorporate all applicable provisions, within 90 days of the effective date of this section. A CTU shall provide a copy of its internal code of conduct required by this section to the commission upon request.

(2) Every CTU or authorized agent shall disseminate the applicable provisions of this section to all existing and new employees and agents, and take appropriate actions to both train employees and enforce compliance with this section on an ongoing basis. Every CTU shall document every employee's and agent's receipt and acknowledgement of its internal policies required by this section, and every CTU shall make such documentation available to the commission upon request.

(h) **Investigation and enforcement.**

(1) **Administrative penalties**. If the commission finds that a CTU has violated any provision of this section, the commission shall order the utility to take corrective action, as necessary, and the utility may be subject to administrative penalties and other enforcement actions pursuant to PURA, Chapter 15.

(2) **Certificate revocation**. If the commission finds that a CTU is repeatedly in violation of this section, and if consistent with the public interest, the commission may suspend, restrict, or revoke the registration or certificate of the CTU.

(3) **Coordination with the Office of the Attorney General**. The commission shall coordinate its enforcement efforts regarding the prosecution of fraudulent, misleading, deceptive, and anticompetitive business practices with the Office of the Attorney General in order to ensure consistent treatment of specific alleged violations.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter F. REGULATION OF TELECOMMUNICATIONS SERVICE.

§26.134. Market Test to be Applied in Determining if Markets with Populations Less than 100,000 Should Remain Regulated.

(a) **Purpose.** The purpose of this section is to establish the market tests to be applied in determining if markets with populations less than 100,000 should remain regulated.

(b) **Application.** This section applies to all incumbent local exchange companies (ILECs), as defined in §26.5 of this title (relating to Definitions).

(c) **Market Test.** Markets as defined in PURA §65.002 with a population of less than 100,000 shall be deregulated only if the ILEC providing services to such a market submits evidence demonstrating that the population in the market is less than 100,000 and in addition to the ILEC there are at least two competitors operating in all or part of the market that:

(1) are unaffiliated with the ILEC; and

(2) provide voice communications service without regard to the delivery technology, including through:

(A) Internet Protocol or a successor protocol;

(B) satellite; or

(C) a technology used by a wireless provider or a commercial mobile service provider, as that term is defined by PURA §64.201.

(d) **Market Test Procedures.**

(1) An ILEC may petition the commission to deregulate a market of the ILEC that the commission previously determined should remain regulated.

(2) Only the ILEC may initiate a proceeding to deregulate one of its markets. Not later than the 90th day after the date the commission receives the petition, the commission shall:

(A) determine whether the regulated market should remain regulated; and

(B) issue a final order classifying the market in accordance with this section.

(3) If the commission deregulates a market that results in a regulated or transitioning company no longer meeting the definition of a regulated or transitioning company, the commission shall issue an order reclassifying the company as a transitioning company or deregulated company, as those terms are defined by PURA §65.002.

(e) **Rural Exemption Waiver.** In the event that an ILEC seeking deregulation of a market area with a population of less than 100,000 has a rural exemption as provided for in 47 U.S.C §251(f)(1) "Exemption For Certain Rural Telephone Companies" of the Communications Act of 1934, a petition for the removal of that rural exemption for that market must be approved by the commission in order for the market in question not to remain regulated. In addition, any such market must meet the conditions of the market test set forth in subsection (c) of this section.

(f) **Timing.**

(1) After September 1, 2011, an ILEC petitioning for deregulation of a market with a population of less than 100,000 shall submit with its petition the evidence in compliance with subsection (c) of this section and, if applicable, subsection (e) of this section.

(2) A market deregulated as of September 1, 2011, shall remain deregulated.

(3) The commission may not reregulate a market or company that has been deregulated.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter G. ADVANCED SERVICES

§26.141. Distance Learning, Information Sharing Programs, and Interactive Multimedia Communications and Private Network Services to Certain Entities.

(a) **Definitions.** The following words and terms, when used in this section, shall have the following meanings, unless the context indicates otherwise.

(1) **Distance learning** -- Instruction, learning, and training that is transmitted from one site to one or more sites by telecommunications services that are used by an educational institution predominantly for such instruction, learning, or training, including video, data, voice, and electronic information.

(2) **Educational institution** -- Accredited primary or secondary schools owned or operated by state and local government entities or by private entities; institutions of higher education as defined by the Education Code, §61.003(13); the Texas Education Agency, its successors and assigns; regional education service centers established and operated pursuant to the Education Code, Chapter 8; and the Texas Higher Education Coordinating Board, its successors and assigns.

(3) **Health center** -- A federally qualified health center delivery site.

(4) **Information sharing program** -- Instruction, learning, and training that is transmitted from one site to one or more sites by telecommunications services that are used by a library predominantly for such instruction, learning, or training, including video, data, voice, and electronic information.

(5) **Interactive multimedia communications** -- Real-time, two-way, interactive voice, video, and data communications conducted over networks that link geographically dispersed locations. This definition includes interactive communications within or between buildings on the same campus or library site.

(6) **Library** -- Public library or regional library system as defined by Government Code, §441.122, or a library operated by an institution of higher education or a school district.

(b) **Distance Learning Information Sharing Programs and Interactive Multimedia Communications.**

(1) **Telecommunications services eligible for reduced rates.**

(a) Any tariffed service, if used predominantly for distance learning purposes by an educational institution or for information sharing program purposes by a library, is eligible for reduced rates, as set forth in this section.

(b) A service is used predominantly for distance learning purposes by an educational institution or for 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 paragraph (3) of this subsection.

(2) **Coordination with federal discounts**

(A) For any discount received pursuant to §26.216 of this title (relating to Educational Percentage Discount Rates (E-Rates)), an eligible school, library or consortia may apply such discount prior to any discount received under paragraph (3) or (4) of this subsection. Any subsequent discount received under this section shall apply to the discounted E-Rate and not the tariffed rate.

(B) Any discount received under §26.216 of this title will be applied subsequent to the rate obtained for services offered pursuant to paragraph (5) of this subsection. For purposes of determining the rate to which a discount pursuant to §26.216 of this title will apply, the rates offered under subsection (b)(5) of this section qualify as the lowest corresponding price.

(3) **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.

(A) The affidavit shall:

(i) specify the requested service(s) to be discounted;

(ii) quantify, if applicable, the requested service(s) to be discounted;

(iii) state that the discounted service(s) will be used predominantly for distance learning purposes or information sharing program purposes; and

(iv) specify the intended use(s) of the discounted service(s).

(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.

(C) No other special form needs to be provided as part of the application process.

(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.

(4) **Interactive multimedia communications services.** Any dominant certificated telecommunications utility that provides interactive multimedia communications services may file a tariff to establish rates at levels necessary, using sound rate-making principles, to recover costs associated with providing such services to educational institutions or libraries. Those interactive multimedia communications services used predominantly for distance learning or information sharing program purposes, however, shall qualify for a 25% discount pursuant to paragraph (3) of this subsection.

(5) **Customer-specific contracts**. When a service is provided to an educational institution or library pursuant to §26.211 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 greater than 110%, including installation, of the customer-specific long-run incremental cost.

(6) **Cost determination.** Notwithstanding paragraph (3) and (4) of this subsection, once the commission develops cost determination rules for telecommunications services generally, a reduced rate approved under this section shall recover the service-specific long-run incremental costs. In the case of interactive multimedia communications services, however, the commission may allow a rate to be set lower than the long-run incremental cost of a specific service if such is determined to be in the public interest.

(c) **Private Network Services for Certain Entities.** A PURA Chapter 58 or 59 electing company shall provide network services to an educational institution; a library, defined as a public library or regional library system as defined by Government Code §441.122, or a library operated by an institution of higher education or a school district; a nonprofit telemedicine center; a public or not-for-profit hospital; a legally constituted consortium or group of these entities listed herein; or a health center.

(1) Priority shall be given to rural areas, areas designated as critically underserved either medically or educationally, and educational institutions with high percentages of economically disadvantaged students.

(2) An electing company shall provide private network services under a customer-specific contract.

(3) An electing company shall offer private network service contracts under PURA Chapter 58, Subchapter G at 110% of the long run incremental cost of providing the private network service, including installation.

(4) An electing company shall file a flat monthly tariff rate for point-to-point intraLATA 1.544 megabits a second service. The tariff rate shall not be distance sensitive or higher than 110 % of the service's statewide average long run incremental cost, including installation.

(5) On request of an entity listed in this subsection, an electing company shall provide point-to-point 45 megabits a second intraLATA services. The rate for the service shall not be higher than 110% of the service's long run incremental cost, including installation, and must be provided under a customer-specific contract except that any interoffice portion of the service must be recovered on a statewide average basis that is not distance sensitive.

(6) An electing company shall provide to an entity listed in this subsection, broadband digital special access service to interexchange carriers, and the rate for the service shall not be higher than 110% of the service's long run incremental cost, including installation.

(7) On request of an entity listed in this subsection, an electing company shall provide expanded interconnection (virtual collocation).

(8) On request of an educational institution or library in an exchange of an electing company serving more than five million access lines in which toll-free access to the Internet is not available, an electing company shall make available a toll-free connection or toll-free dialing arrangement that the institution or library may use to obtain access to the Internet in an exchange in which toll-free access to the Internet is available at no charge until Internet access becomes available in the exchange of the requesting institution or library. The electing company is not required to arrange for Internet access or to pay Internet charges for the requesting institution or library.

(9) The private network services provided under PURA Chapter 58, Subchapter G may be interconnected with other similar networks for distance learning, telemedicine, and information-sharing purposes.

§26.142. Integrated Services Digital Network (ISDN).

(a) **Purpose.** The commission finds that Integrated Services Digital Network (ISDN) is an alternative to "plain old telephone service." At this time, ISDN is not a replacement for "plain old telephone service," but rather ISDN provides the public switched telephone network with end-to-end digital connectivity. As such, ISDN should be made available to customers at a reasonable price, should be as accessible as possible to customers who want ISDN, should meet minimum standards of quality and consistency, and should be provided in such a manner that permits the dominant certificated telecommunications utility (DCTU) a reasonable opportunity to earn a reasonable return on invested capital. The provisions of this section are intended to establish the minimum criteria for the provision of ISDN.

(b) **Application.**

(1) This section applies to DCTUs.

(2) All DCTUs providing ISDN must do so in accordance with the requirements of this section.

(3) An application to make ISDN available under this section shall comply with the requirements of §26.121 of this title (relating to Privacy Issues), and §26.123 of this title (relating to Caller Identification Services).

(c) **Availability of ISDN.**

(1) Each DCTU shall make ISDN available to all customers in exchange areas having 50,000 or more access lines as of February 22, 1995. For purposes of this section, making ISDN available means providing ISDN to a customer within 30 days of that customer's request. Nothing in this section shall be construed as requiring a DCTU to provide ISDN to any customer prior to that customer's request for ISDN. The requirements of this paragraph shall not be met by making ISDN available to the customers of these exchange areas using a foreign exchange (FX) arrangement.

(2) Each DCTU subject to the requirements of paragraph (1) of this subsection shall make ISDN available to all customers in exchange areas having less than 50,000 access lines as of February 22, 1995. The requirements of this paragraph may be met by making ISDN available to the customers of these exchange areas using a FX arrangement, if that is the most economically efficient means for the DCTU to make ISDN available.

(3) It is the goal of the commission that ISDN should be made available to customers in all exchange areas not included in paragraphs (1) and (2) of this subsection. To this end, all telecommunications providers are encouraged to work together to make ISDN available to the customers of the DCTUs that do not have the facilities with which to make ISDN available to their customers. In the exchange areas not included in paragraph (1) of this subsection, the commission recognizes that ISDN may be made available using a FX arrangement, if that is the most economically efficient means for the DCTU to make ISDN available.

(d) **ISDN standards and services**

(1) **ISDN standards.**

(A) At a minimum, all ISDN shall comply with National ISDN-1 and National ISDN-2 Standards as promulgated by Bellcore as of February 22, 1995.

(B) All ISDN shall be capable of providing end-to-end digital connectivity.

(2) **ISDN services.** At a minimum, the DCTU shall make available the ISDN services listed in the National ISDN-1 and National ISDN-2 Standards promulgated by Bellcore as of February 22, 1995.

(3) **Existing customers.** Existing customers as of February 22, 1995 may continue to receive ISDN irrespective of whether that ISDN complies with this subsection. Those customers may continue to receive such ISDN and shall be required to receive ISDN under the requirements of this subsection

only if there is at least a 30 day customer-caused cessation of the ISDN service provided by the DCTU.

(4) **Waiver provision.** A DCTU may request, and the presiding officer may grant for good cause, modification or waiver of paragraphs (1) and/or (2) of this subsection. Such a request may be reviewed administratively. Any request for modification or waiver of the requirements of paragraphs (1) and/or (2) of this subsection shall include a complete statement of the DCTU's arguments and factual support for that request.

(e) **Costing and pricing of ISDN.**

(1) **Costing of ISDN.** The cost standard for ISDN shall be the long run incremental cost (LRIC) of providing ISDN.

(2) **Pricing of ISDN.**

(A) Rates and terms.

(i) The rates and terms of ISDN, including basic rate interface (BRI), primary rate interface (PRI) and other ISDN services, shall be just and reasonable and shall not be unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive.

(ii) The annual revenues for ISDN, including BRI, PRI, and other ISDN services, shall be sufficient to recover the annual long run incremental cost and a contribution for joint and/or common costs, in the second year after it is first offered under the tariffs approved pursuant to this section.

(B) Foreign serving office (FSO) rate. Where the DCTU makes ISDN available by designating a foreign serving office (FSO) arrangement, the DCTU shall not charge an FSO rate.

(C) Foreign exchange (FX) rate.

(i) Except as provided in clause (ii) of this subparagraph, where the DCTU is allowed to make ISDN available by designating a FX arrangement, the DCTU may charge an FX rate. A new FX rate shall be developed specifically for ISDN and this rate shall not be usage based. If the FX rate is priced at not less than 100% of LRIC and at not more than 105% of LRIC, there shall be a rebuttable presumption that the amount of joint and/or common costs recovered is appropriate.

(ii) Where the DCTU can make ISDN available to a customer by designating an FSO arrangement, the DCTU shall not charge a FX rate.

(D) Pricing of BRI. To further the commission's policy that ISDN be made available at a reasonable price and that ISDN be as accessible as possible to those customers who want ISDN, BRI should be priced to recover its LRIC plus a minimal amount of joint and/or common costs. If BRI is priced at not less than 100% of LRIC and at not more than 105% of LRIC, there shall be a rebuttable presumption that the amount of joint and/or common costs recovered is appropriate.

(E) Existing customers. Existing customers as of February 22, 1995 shall be subject to the rates set in compliance with this subsection, notwithstanding their choice to continue receiving ISDN under subsection (d) of this section.

(3) **Pricing of ISDN for small LECs.** After a Class A DCTU is in compliance with this section, a small local exchange carrier (SLEC) as defined in §26.5 of this title (relating to Definitions) may price ISDN services at plus or minus 25% of the rates approved by the commission for that Class A DCTU providing the service within the State of Texas or at the

rates for ISDN services approved by the commission for a similar SLEC. For the purpose of this section a similar SLEC is defined as a SLEC having a total number of access lines within 5,000 access lines of the applying SLEC.

(f) **Requirements for notice and contents of application in compliance with this section.**

(1) **Notice of application.** The presiding officer may require notice to the public as required by the commission's Procedural Rules, Chapter 22, Subchapter D, of this title and shall require direct notice to all existing ISDN customers. Unless otherwise required by the presiding officer or by law, the notice shall include at a minimum a description of the service, the proposed rates and other terms of the service, the types of customers likely to be affected if the application is approved, the proposed effective date for the application, and the following language: "Persons who wish to comment on this application should notify the commission by (specified date, ten days before the proposed effective date). Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Office of Customer Protection at (512) 936-7120 or toll free at (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136."

(2) **Contents of application for each DCTU not electing the SLEC pricing provisions of subsection (e)(3) of this section.** A DCTU that makes ISDN available shall file with the commission an application complying with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the Office of Regulatory Affairs and one copy shall be delivered to the Office of Public Utility Counsel. The application shall contain the following:

(A) the proposed tariff sheets to implement the requirements of subsections (c), (d), and (e) of this section as required by subsection (g) of this section;

(B) a statement by the DCTU describing how it intends to comply with this section, including how it intends to comply with subsections (c), (d), and (e) of this section as required by subsection (g) of this section;

(C) a description of the proposed service(s) and the rates, terms, and conditions under which the service(s) are proposed to be offered and an explanation of how the proposed rates and terms of the service(s) are just and reasonable and are not unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive;

(D) a statement by the DCTU of whether the application contains a rate change;

(E) the proposed effective date of the service;

(F) a statement detailing the method and content of the notice, if any, the utility has provided or intends to provide to the public regarding the application and a brief statement explaining why the DCTU's notice proposal is reasonable and that the DCTU's notice proposal complies with applicable law;

(G) a copy of the text of the notice, if any;

(H) a long run incremental cost study (LRIC) supporting the proposed rates;

(I) projections of revenues, demand, and costs demonstrating that in the second year after the ISDN service is first offered under the tariffs approved pursuant to this section, the proposed rates will generate sufficient annual revenues to recover the annual long run incremental costs of providing the service, as well as a contribution for joint and/or common costs;

(J) the information required by §26.121 and §26.123 of this title;

(K) a statement specifying the exchanges in which the DCTU proposes to offer ISDN, the exchanges in which the DCTU proposes to offer ISDN using an FSO arrangement, the

exchanges in which the DCTU proposes to offer ISDN using an FX arrangement, and the exchanges in which the DCTU does not propose to offer ISDN; and

(L) any other information which the DCTU wants considered in connection with the commission's review of its application.

(3) **Contents of application for a SLEC.** A SLEC that makes ISDN available and elects to price ISDN services under subsection (e)(3) of this section shall file with the commission an application complying with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the Office of Regulatory Affairs and one copy shall be delivered to the Office of Public Utility Counsel. The application shall contain the following:

(A) contents of application required by paragraph (2)(A), (B), (D), (E), (F), (G), (J), (K), and (L) of this subsection;

(B) a description of the proposed service(s) and the rates, terms, and conditions under which the service(s) are proposed to be offered and an affidavit from the general manager or an officer of the SLEC approving the proposed ISDN service;

(C) a notarized affidavit from a representative of the SLEC:

(i) verifying the number of access lines, including the access lines of affiliates of such SLEC providing local exchange telephone service within the state, the SLEC has in service in the State of Texas;

(ii) verifying that the rates have been determined by the SLEC independently;

(iii) including a statement affirming that the rates are just and reasonable and are not unreasonably preferential, prejudicial, or discriminatory; subsidized directly or indirectly by regulated monopoly services; or predatory, or anticompetitive; and

(D) an explanation demonstrating that the rates for the proposed ISDN service are within the guidelines provided by subsection (e)(3) of this section; and

(E) projections of the amount of revenues that will be generated by the ISDN service.

(g) **Timing of and requirements for each DCTU's compliance with this section.**

(1) Each DCTU that is required to make ISDN available under subsection (c)(1) and (2) of this section shall file with the commission an application as described in subsection (f) of this section. Pursuant to subsection (f)(2)(A) and (B) of this section, the DCTU shall show its compliance with the requirements of:

(A) subsection (c)(1) and (2) of this section;

(B) subsections (d)(1)(A) and (B), (d)(2) and (d)(3) of this section or request a waiver pursuant to subsection (d)(4) of this section and provide sufficient justification for the good cause exception; and

(C) subsection (e)(2)(B), (C), and (D) of this section.

(2) Each DCTU having ISDN tariffs in effect as of February 22, 1995 and that is not subject to paragraph (1) of this subsection shall file with the commission an application as described in subsection (f) of this section. Pursuant to subsection (f)(2)(A) and (B) of this section, the DCTU shall show its compliance with the requirements of:

(A) subsections (d)(1)(A) and (B), (d)(2) and (d)(3) of this section or request a waiver pursuant to subsection (d)(4) of this section and provide sufficient justification for the good cause exception; and

(B) subsection(e)(2)(B), (C), and (D) of this section.

(3) Rates proposed for services pursuant to paragraphs (1)(B) and (2)(A) of this subsection that are not tariffed as of the effective date of this section and rates proposed under paragraphs (1)(C) and (2)(B) of this subsection shall comply with the requirements of subsections (e)(1), (2)(A) and (E) of this section.

(4) Each DCTU offering ISDN after the effective date of this section shall file with the commission an application as described in subsection (f) of this section. Pursuant to subsection (f)(2)(A) and (B) of this section the DCTU shall show its compliance with the requirements of:

(A) subsections (d)(1)(A) and (B) and (d)(2) of this section or request a waiver pursuant to subsection (d)(4) of this section and provide sufficient justification for the good cause exception; and

(B) subsection (e)(1) and (2) of this section for each DCTU not electing the SLEC pricing provisions of subsection (e)(3) of this section or subsection (e)(3) of this section for a SLEC.

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

(1) **Administrative review.** An application considered under this section may be reviewed administratively unless the DCTU requests the application be docketed or the presiding officer, for good cause, determines at any point during the review that the application should be docketed.

(A) The operation of the proposed rate schedule may be suspended for 35 days after the effective date of the application. The effective date shall be no earlier than 30 days after the filing date of the application or 30 days after public notice is completed, whichever is later.

(B) The application shall be examined for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant shall be notified within ten working days of the filing date of the specific deficiency in its application, and the earliest possible effective date of the application shall be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any time deadlines shall be determined from the 30th day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date.

(C) While the application is being administratively reviewed, the staff of the Office of Regulatory Affairs and the staff of the Office of Public Utility Counsel may submit requests for information to the DCTU. Six copies of all answers to such requests for information shall be filed with Central Records and one copy shall be provided the Office of Public Utility Counsel within ten days after receipt of the request by the DCTU.

(D) No later than 20 days after the filing date of the sufficient application, interested persons may provide to the staff of the Office of Regulatory Affairs written comments or recommendations concerning the application. The staff of the Office of Regulatory Affairs shall and the Office of Public Utility Counsel may file with the presiding officer written comments or recommendations concerning the application.

(E) No later than 35 days after the effective date of the application, the presiding officer shall issue an order approving, denying, or docketing the DCTU's application.

(2) **Approval or denial of application.** The application shall be approved by the presiding officer if the proposed ISDN offered by the DCTU complies with each requirement of this section. If, based on the administrative review, the presiding officer determines that one or more of the requirements not waived have not been met, the presiding officer shall docket the application.

(3) **Standards for docketing.** The application may be docketed pursuant to Procedural Rule §22.33(b) of this title (relating to Tariff Filings).

(4) **Review of the application after docketing.** If the application is docketed, the operation of the proposed rate schedule shall be automatically suspended to a date 120 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after the effective date, whichever is later. Affected persons may move to intervene in the docket, and the presiding officer may schedule a hearing on the merits. The application shall be processed in accordance with the commission's rules applicable to docketed cases.

(5) **Interim rates.** For good cause, interim rates may be approved after docketing. If the service requires substantial initial investment by customers before they may receive the service, interim rates shall be approved only if the DCTU shows, in addition to good cause, that it will notify each customer prior to purchasing the service that the customer's investment may be at risk due to the interim nature of the service.

(i) **Commission processing of waivers.** Any request for modification or waiver of the requirements of this section shall include a complete statement of the DCTU's arguments and factual support for that request. The presiding officer shall rule on the request expeditiously.

(j) **Limitation on filings and postings.** Notwithstanding any provision in this section to the contrary, the commission may not require a transitioning company to obtain advance approval for a filing with the commission or a posting on the company's Internet website that adds, modifies, withdraws, or grandfathers services under this section.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter G. ADVANCED SERVICES

§26.143. Provision of Advanced Services in Rural Areas.

(a) **Purpose.** The purpose of this section is to implement Public Utility Regulatory Act (PURA) §55.014 regarding the provision of advanced services to facilitate connection of end users to the Internet. This section is also intended to promote the policy, pursuant to PURA §51.001(g), that customers in all regions of this state have access to advanced telecommunications and information services.

(b) **Application.** This section applies to a company electing under PURA Chapter 58 or a company that holds a certificate of operating authority (COA) or service provider certificate of operating authority (SPCOA). This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under PURA §52.154.

(c) **Definitions.** The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Advanced services provider** -- Any entity that offers or deploys advanced services, such as a holder of a certificate of convenience and necessity, a COA, a SPCOA, a cable company, a fixed wireless company, a satellite company, or any other provider of an advanced service.

(2) **Advanced telecommunications services** — Any retail telecommunications services that, regardless of transmission medium or technology, are capable of originating and receiving data transmissions for the purpose of accessing the Internet with a speed of at least 200 kilobits per second in the last mile in one direction and with a speed of at least 128 kilobits a second in the last mile in the opposite direction.

(3) **Advanced services** — Any retail services that, regardless of transmission medium or technology, are capable of originating and receiving data transmissions for the purpose of accessing the Internet with a speed of at least 200 kilobits per second in the last mile in one direction and with a speed of at least 128 kilobits a second in the last mile in the opposite direction. An advanced service includes any advanced telecommunications service.

(4) **Company** — A telecommunications utility electing under PURA Chapter 58 or an entity that holds a COA or a SPCOA that provides advanced telecommunications services in urban areas of this state and provides local exchange telephone services in a rural area seeking provision of advanced services.

(5) **Reasonably comparable or similar services** — Any services that meet the definition of an advanced service. Each advanced service is substitutable for any other advanced service.

(6) **Rural area or rural service area** — Any community located in a county not included within any Metropolitan Statistical Area (MSA) boundary, as defined by the United States Office of Management and Budget, and any community within an MSA with a population of 20,000 or fewer not adjacent to the primary MSA city.

(7) **Urban area or urban service area** — A municipality in this state with a population of more than 190,000.

(d) **Provision of advanced services.**

(1) **Requirement to provide an advanced service.**

(A) A company that provides advanced telecommunications services within the company's urban service areas shall, on a Bona Fide Retail Request for service, provide in rural areas served by the company advanced services that are reasonably comparable to the advanced telecommunications services provided in urban areas. The company shall provide such advanced services to the retail customer(s) seeking service through a Bona Fide Retail Request determined by the commission under this section:

(i) at reasonably comparable prices, terms, and conditions to the prices, terms, and conditions for similar advanced telecommunications services provided by the company in proximate urban areas; and

(ii) within 15 months after notice of the Bona Fide Retail Request for those services is published in the *Texas Register*.

(B) A company that provides advanced services in a rural area pursuant to a Bona Fide Retail Request shall provide advanced services to any subsequent retail customer(s) located within 14,000 26-gauge cable feet or its equivalent of the same central office as determined for the original Bona Fide Retail Request under this section:

(i) at reasonably comparable prices, terms, and conditions to the prices, terms and conditions for similar advanced services provided by the company in proximate urban areas; and

(ii) within a reasonably comparable period of time as the period of time a company provides advanced telecommunications services to the company's subsequent retail advanced services customers located in proximate urban areas.

(C) A company meets the requirement of providing a reasonably comparable advanced service if the company has provided the requested or a reasonably comparable advanced service in accordance with this section either:

(i) directly; or

(ii) through a business arrangement with an advanced services provider.

(D) A company shall not be required to provide advanced services in a rural area when an advanced services provider is already providing advanced services in the rural area seeking an advanced service at the time of the Bona Fide Retail Request or within 15 months after notice of the Bona Fide Retail Request is published in the *Texas Register*. When determining if another provider is already providing an advanced service in a rural area, the commission shall, with information available to the public, consider:

(i) whether an advanced services provider is actively marketing an advanced service in the rural area;

(ii) whether an advanced services provider is offering, directly or indirectly, installation and repair services for facilities and equipment necessary for the provision of the advanced service;

(iii) whether customers in the rural area are able to receive installation and repair services necessary for facilities and equipment;

(iv) whether the price of installation and repair services are reasonably comparable to prices in proximate urban areas; and

(v) whether an advanced services provider or distributor is located within or near the rural area.

(E) The absence of an Internet service provider is a factor to be considered, but necessarily an exception, when requiring a company to provide advanced services in a rural area.

(F) This section may not be construed to require a company to:

(i) begin providing services in a rural area in which the company does not provide local exchange telephone service;

(ii) provide advanced services in a rural area of this state unless the company provides advanced telecommunications services in urban areas of this state; or

(iii) provide a specific advanced service or technology in a rural area.

(2) **Reasonably comparable price, terms, and conditions.** Advanced services provided by a company to a rural area pursuant to paragraph (1) of this subsection must be provided at prices, terms, and conditions that are reasonably comparable to the prices, terms, and conditions for similar advanced telecommunications services provided by the company in proximate urban areas.

(A) Reasonably comparable prices.

(i) If a monthly retail price for an advanced service is within 140% of the monthly retail price of the advanced telecommunications service offered in the same company's proximate urban service area, there shall be a rebuttable presumption that the price is reasonably comparable. A promotional rate for an advanced telecommunications service shall not be considered a monthly retail price if it is offered for less than four months.

(ii) When considering whether a price is reasonably comparable, the commission shall consider the distance, terrain, and features of the rural area seeking the advanced service.

(iii) A company may rebut the 140% presumption by showing that a higher price is necessary to recover its reasonable costs in providing the advanced service.

(iv) Any interested person may rebut the 140% presumption by showing that a lower price will allow a company to recover its reasonable costs in providing the advanced service.

(v) Any company or interested person seeking to rebut the 140% presumption by showing that a higher or lower price is warranted must do so during the Commission Selection Proceeding under subsection (f)(4) of this section. Any dispute regarding a company's reasonably comparable price must be resolved during the Commission Selection Proceeding under subsection (f)(4) of this section.

(B) Reasonably comparable terms and conditions.

(i) Reasonably comparable terms and conditions are those terms and conditions applicable to the provision of advanced services in a rural area that are similar to the terms and conditions for advanced telecommunications services provided by the same company in proximate urban areas.

(ii) A company may require a term commitment for all persons seeking advanced services under a Bona Fide Retail Request. When considering whether a term commitment is reasonably comparable, the commission shall consider the distance, terrain, and features of the rural area seeking the advanced service.

(e) **Requesting competitive response for provision of advanced services.** A person(s) in a rural area seeking provision of an advanced service shall first submit a request for a competitive response for provision of those services. The request need not conform to the requirements of a Bona Fide Retail Request unless the requesting person(s) intends to seek provision of an advanced service under the Bona Fide Retail Request process in subsection (f) of this section.

(1) **Requesting advanced services.**

(A) Any person(s) in a rural area seeking the provision of advanced services shall submit a written request to the commission for posting on the commission website.

(B) The written request must include the name, address, and telephone number of a contact person.

(C) Within five working days after receipt, the commission shall post the request for advanced services on the commission's website.

(D) The commission shall post on the commission website:

(i) the name, address, and telephone number of the contact person;

(ii) the number of lines requested;

(iii) the number of customers requesting service;

(iv) the location of the rural area seeking the advanced service; and

(v) any other information the commission deems relevant.

(2) **Competitive response.**

(A) After posting on the website, any company or advanced service provider may submit to the contact person a proposal to provide advanced services to the person(s) seeking advanced services.

(B) Proposals must be submitted to the contact person within 50 days after the request was posted and provide for deployment of the advanced service within 15 months after the request was posted by the commission.

(C) The person(s) seeking advanced services may negotiate with and select a provider based upon all of the proposals received.

(D) If no advanced services provider has committed to provide advanced services to the person(s) submitting a request within 60 days after the request was posted by the commission, the contact person shall notify the commission. Upon notification, the contact person may ask that the commission establish a proceeding to determine that the request is a Bona Fide Retail Request.

(f) **Bona Fide Retail Request process.**

(1) **Commission proceeding to determine a Bona Fide Retail Request.**

(A) Upon request under subsection (e)(2)(D) of this section, the commission shall determine whether a request is a Bona Fide Retail Request. This request may be processed administratively.

(B) Any interested person may present written comments or objections, setting forth the basis of any facts in dispute, regarding whether the request is a Bona Fide Retail Request under this section.

(2) **Bona Fide Retail Request.** A Bona Fide Retail Request must:

(A) include a written request for at least 150 lines for service within 14,000 26-gauge cable feet or its equivalent of the same central office in a rural area;

(B) contain the name, address, telephone number, and signature of the retail customer(s) seeking service, the advanced service(s) requested, and the date of the request;

(C) contain the name, address, and telephone number of a contact person;

(D) state whether an advanced services provider is already providing, is contracted to provide, or is willing to provide advanced services in the rural area seeking the advanced service; and

(E) state whether an Internet service provider is providing or commits to provide functional Internet connectivity in the rural area seeking the advanced service.

(3) **Notice of Bona Fide Retail Request**. After determination that a request is a Bona Fide Retail Request, the commission shall:

(A) notify electronically or by mail all companies electing under PURA Chapter 58 and all COA and SPCOA holders of the Bona Fide Retail Request;

(B) post notice of the Bona Fide Retail Request on the commission website; and

(C) publish notice of the Bona Fide Retail Request in the Texas Register.

(D) The commission shall include in the notification, post on the commission website, and publish in the Texas Register:

(i) the name, address, and telephone number of the contact person;

(ii) the number of lines requested;

(iii) the number of customers requesting service;

(iv) the location of the rural area; and

(v) any other information the commission deems relevant.

(4) **Commission selection proceeding.** After notification of the Bona Fide Retail Request, the commission shall establish a proceeding to select the company or companies obligated to provide an advanced service.

(A) Company response. Each company subject to this section for the rural area seeking advanced services shall submit a proposal for the provision of one or more advanced services to the retail customer(s) seeking service through the Bona Fide Retail Request determined by the commission under this section.

(i) Each company shall submit its proposal within 30 days after publication of the Bona Fide Retail Request notice in the Texas Register.

(ii) All proposals shall comply with the requirements of subsection (d) of this section.

(iii) A company required to submit a proposal may contest the obligation to serve by setting forth the basis of its challenge. The company must, however, file its proposal as required by this subsection.

(B) Company response exemption. A company subject to this section for the rural area seeking advanced services is presumed to be exempt from the requirements of this subsection and is not required to submit a proposal for the provision of advanced services if, at the time the Bona Fide Retail Request is published in the *Texas Register*, the company served fewer than 150 local exchange telephone service lines within 14,000 26-gauge cable feet or its equivalent of the same central office as determined for the Bona Fide Retail Request under this section in the last month of the most recent quarterly reporting period submitted to the commission pursuant to Local Government Code, Chapter 283.

(C) Commission determination. Within 150 days after notice of the Bona Fide Retail Request is published in the *Texas Register*, the commission shall determine the selected company or companies obligated to serve the retail customer(s) seeking service through the Bona Fide Retail Request determined by the commission under this section.

(D) Selection criteria. When selecting the company or companies obligated to serve, among other factors the commission may deem relevant, the commission shall consider:

(i) the overall quality of telecommunications service in the rural area;

(ii) the characteristics and attributes of network facilities in the rural area;

(iii) the terrain and geographic features of the rural area;

(iv) the number of local exchange telephone service providers in the rural area;

(v) the population and population density of the rural area;

(vi) the number of local exchange telephone service customers the company serves in the rural area;

(vii) the manner or method by which the company provides local exchange telephone service in the rural area;

(viii) whether a company that provides local exchange service through resale or unbundled network element platform can purchase advanced services through resale or unbundled network element platform in the rural area;

(ix) the extent to which the selection may prohibit or have the practical effect of prohibiting the ability of any company to provide local exchange telephone service in rural areas;

(x) a company's planned response for subsequent requests for service within 14,000 26-gauge cable feet or its equivalent of the same central office as determined for the original Bona Fide Retail Request under this section;

(xi) the method by which the company would provide an advanced service in the rural area; and

(xii) whether a company provides service in proximate urban areas to the rural area seeking advanced services.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter I. ALTERNATIVE REGULATION

§26.171. Small Incumbent Local Exchange Company Regulatory Flexibility.

(a) **Purpose and application**.

(1) **Purpose.** The purpose of this section is to establish procedures and pricing guidelines that small incumbent local exchange companies (ILECs), because of their special characteristics, may use to expedite commission approval of services and rates in accordance with the Public Utility Regulatory Act (PURA), Chapter 53, Subchapter G. Through this section, the commission encourages the provision of adequate and efficient telecommunications service by facilitating the ability of small ILECs' to offer technologically advanced services that are generally available in metropolitan areas from large ILECs.

(2) **Application**. This section applies to any small ILEC as that term is defined in §26.5 of this title (relating to Definitions), except that this section does not apply to a cooperative corporation partially deregulated under PURA, Chapter 53, Subchapter H. Nothing in this section precludes a small ILEC from offering a packaged service, new service, or promotional service or proposing a change in rates under other applicable sections of the PURA. Nothing in this section prohibits the commission from conducting a review in accordance with PURA, Chapter 53, Subchapter D. Notwithstanding limitations contained within §26.121 of this title (relating to Privacy Issues), §26.121 of this title applies to notices to the commission (commission notices) filed under this section.

(b) **Definition.** The term "affected customer" when used in this section means a customer that is in the class of customers and in the exchange or exchanges affected by the notice filed in accordance with the provisions of this section.

(c) **Filing.** By following procedures outlined in this section, a small ILEC may offer extended local calling service, a packaged service, a promotional service, or a new service on an optional basis or make a minor change in its rates or tariffs.

(1) **Notice**. At least 10 calendar days before the effective date of the proposed change, the small ILEC shall file six copies of a commission notice with the commission's Filing Clerk and shall serve a copy upon the Office of Public Utility Counsel. Such notice shall include:

(A) a copy of the customer notice required by subsection (d) of this section;

(B) a sufficient description of how notice was or will be provided to the customers to allow the presiding officer to rule on the sufficiency of the notice;

(C) any request for a good cause waiver to the requirements of this section, and sufficient justification for the good cause exception to allow the presiding officer to rule on the request;

(D) a copy of the resolution adopted by the small ILEC's board of directors approving the proposed change;

(E) the proposed effective date of the change;

(F) a description of the affected services and the category of customers affected by the proposed change;

(G) a copy of the proposed tariff;

(H) the number of access lines the small ILEC and each of its affiliates has in service in the state;

(I) the amount by which the small ILEC's total regulated intrastate gross annual revenues will increase or decrease as a result of the proposed change, and, if the proposal is for a rate change, sufficient information to demonstrate that the proposed change is a minor change;

(J) a statement affirming that the rates are just and reasonable, are not unreasonably preferential, prejudicial, or discriminatory, and are sufficient, equitable, and consistent in application to each class of customers, in accordance with PURA §53.003;

(K) information required by §26.121 of this title; and

(L) any other information the small ILEC wants considered in connection with the notice.

(2) **Response to the commission notice**. No later than ten calendar days after the small ILEC files the commission notice, the presiding officer assigned to the project shall notify the small ILEC of any deficiencies in the commission notice, whether the notice to the customers is approved, and whether a waiver request, if any, is granted.

(d) **Notice.** A small ILEC satisfies the notice requirements in paragraphs (1)-(4) of this subsection by completing notice to the affected customers no later than 10 days before the proposed effective date of the tariff sheets. If notice is not completed as required, the proposed effective date shall be postponed for as many days as completion of notice is delayed.

(1) **Extended local calling service, packaged service, promotional service or new service**. For extended local calling service, a packaged service, promotional service or a new service, notice shall be provided to each affected customer .

(2) **Good cause exceptions**. The presiding officer may require for good cause that notice be provided in addition to notice proposed by the small ILEC for a proposed new service or may waive for good cause the notice requirement prescribed by this section.

(3) **Contents of notice**. Each notice must include:

(A) a description of the service(s) affected by the proposed change;

(B) a list of rates affected by the commission notice and how the rates affect each category of affected customers;

(C) the proposed effective date of the change;

(D) an explanation of the affected customer's right to petition the commission for review under subsection (g)(2) of this section, including the number of affected persons required to petition before commission review will occur and the date by which the petition must be received by the commission, which date must be 30 calendar days following the completion of notice;

(E) an explanation of the affected customer's right to obtain from the small ILEC a copy of the proposed tariff and instructions on how to do so; and

(F) the amount by which the small ILEC's total regulated intrastate gross annual revenues will increase as a result of the proposed change.

(4) **Proof of customer notice**. No later than seven calendar days following completion of notice, the small ILEC or a representative of the small ILEC shall file one or more affidavits establishing proof of notice to customers as required by this subsection.

(e) **New service availability.** If the commission notice concerns a new service, as defined in §26.5 of this title, that will not be offered system-wide, the small ILEC shall explain separately for each telephone exchange why the new service cannot be offered system-wide.

(f) **Rates and revenues.** The following requirements apply to a commission notice filed under this section:

(1) **Minor change**. A proposed rate change must be a minor change as defined in §26.5 of this title.

(2) **Limitation on rate increases.** Except for good cause shown, a rate shall not be increased more than once in any 12-month period.

(3) **Rate-setting principles.** A rate established under this section must be in accordance with the rate-setting principles of PURA, Chapter 53, except that a small ILEC may provide to its board members, officers, employees, or agents free or reduced rates for services.

(g) **Review**.

(1) **Effective date**. A proposed tariff filed under this section shall be effective on the date proposed by the small ILEC, unless the effective date is suspended.

(2) **Suspension of tariff**. The proposed tariff may be suspended up to 150 calendar days to provide the commission an opportunity to review the commission notice. Additionally the presiding officer shall suspend the tariff if within 30 calendar days following the completion of the customer notice:

(A) the commission receives a complaint relating to the proposed change signed by the lesser of 5.0% or 1,500 of the affected local service customers to which the proposed change applies. Five percent shall be calculated based upon the total number of affected customers of record as of the calendar month preceding receipt of the complaint; or

(B) the commission receives a complaint relating to the proposed change from either an affected intrastate access customer or a group of affected intrastate access customers that, in the preceding 12 months, the small ILEC billed more than 10% of its total intrastate gross access revenues; or

(C) the proposed change is not a minor change; or

(D) the proposed change is not consistent with the commission's written substantive policies; or

(E) the small ILEC has not complied with the procedural requirements of this section.

(h) **Docketing**. Following suspension of the effective date of the proposed tariff, the presiding officer shall provide a small ILEC a reasonable opportunity to modify its commission notice to address conditions that exist, if any, under subsection (g)(2) of this section. If conditions under subsection (g)(2) of this section are not resolved during the suspension period, the presiding officer may docket the project. If the project is docketed, the effective date of the proposed tariff shall be automatically suspended and the commission shall review the commission notice in accordance with the commission’s procedural rules applicable to docketed cases.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter I. ALTERNATIVE REGULATION

§26.172. Voting Procedures for Partial Deregulation or Reversal of Partial Deregulation of Telephone Cooperatives.

(a) **Purpose.** A cooperative seeking to partially deregulate or to reverse partial deregulation shall utilize the voting procedures required in this section.

(b) **Definition.** The term "majority vote" shall mean a vote of more than 50% of the valid ballots returned by the cooperative's members.

(c) **Balloting**. Balloting by a cooperative shall comply with the requirements in this subsection.

(1) A ballot and a postage-paid return envelope, or a ballot on a postage-paid postcard addressed to the cooperative, and instructions shall be provided to each member of the cooperative.

(2) Materials required in paragraph (1) of this subsection may be provided as bill inserts or as a separate mailing.

(3) The ballot shall be printed as a separate form on paper that is a different color from any other paper contained in the same mailing and shall be contained on one page or postcard.

(4) Ballots shall be written in English and in Spanish if §26.26 of this title (relating to Spanish Language Requirements) is applicable.

(5) **The ballot shall be entitled:**

(A) "BALLOT SEEKING THE PARTIAL DEREGULATION OF (NAME OF COOPERATIVE)" if the ballot is one for partial deregulation; or

(B) "BALLOT SEEKING TO REVERSE THE PARTIAL DEREGULATION OF (NAME OF COOPERATIVE)" if the ballot is one to reverse partial deregulation.

(6) **Each ballot shall:**

(A) provide brief instructions to mark with an "X" either the box "FOR" or "AGAINST" the action that is the subject of the balloting**;**

(B) provide in boldface type that is larger than surrounding text the date certain by which the ballot must be postmarked for tabulation; and

(C) contain a box labeled "FOR Authorizing the Partial Deregulation of the (Name of the Cooperative)" and a box labeled "AGAINST Authorizing the Partial Deregulation of the (Name of the Cooperative)" if the ballot is one to partially deregulate, or contain a box labeled "FOR Authorizing the Reversal of Partial Deregulation of the (Name of the Cooperative)" and a box labeled "AGAINST Authorizing the Reversal of Partial Deregulation of the (Name of the Cooperative)" if the ballot is one to reverse partial deregulation.

(7) Ballots must include the statement "By signing this ballot, I affirm that I am the member to whom this ballot was addressed" and must provide, following the statement, lined spaces for the member to provide his or her printed name, address, telephone number, and signature.

(8) Ballots shall not contain any statement regarding how a member should cast a vote on the action that is the subject of the balloting.

(d) **Instructions for balloting.** Instructions for balloting by a cooperative shall comply with the requirements in this subsection.

(1) Instructions for balloting shall accompany each ballot provided to a member of the cooperative.

(2) Instructions shall be printed as a form separate from the ballot and any other insert provided in the same mailing and shall be provided in English and in Spanish, if §26.26 (relating to Spanish Language Requirements) is applicable.

(3) **Instructions shall be entitled:**

(A) "INSTRUCTIONS FOR BALLOT SEEKING THE PARTIAL DEREGULATION OF (NAME OF COOPERATIVE)" if the ballot is one for partial deregulation; or

(B) "INSTRUCTIONS FOR BALLOT SEEKING TO REVERSE THE PARTIAL DEREGULATION OF (NAME OF COOPERATIVE)" if the ballot is one to reverse partial deregulation.

(4) Instructions shall explain in plain language the meaning of:

(A) partial deregulation and the effects of partial deregulation, if the vote is one to partially deregulate; or

(B) reversal of partial deregulation and the effects of reversal of partial deregulation, if the vote is one to reverse partial deregulation.

(5) Instructions must state in boldface type that is larger than surrounding text the date certain by which the ballot must be postmarked for tabulation.

(6) Instructions shall explain that a ballot must be returned for tabulation via U.S. mail.

(7) Instructions shall not contain any statement regarding how a member should cast a vote on the action that is the subject of the balloting.

(8) Instructions shall define majority vote and shall explain that a majority vote is required in order to achieve the action that is the subject of the balloting.

(e) **Tabulation of ballots.**

(1) **A ballot will be tabulated if it:**

(A) contains a mark in the box either "FOR" or "AGAINST" the action being sought;

(B) is postmarked for tabulation within 45 days following the date that ballots are mailed to members; and

(C) is returned via U.S. mail.

(2) **The following votes will not be tabulated:**

(A) a ballot for which neither a "FOR" nor an "AGAINST" vote is cast;

(B) a ballot for which both a "FOR" and an "AGAINST" vote is cast;

(C) a ballot that represents a second vote for the member;

(D) a ballot for which the procedures required by this section are not followed;

(E) a ballot for which the envelope or postcard bears a postmark later than the 45th day following the date the ballot or postcard was mailed to the member.

(F) a ballot that represents a vote from a non-member customer.

(G) a ballot which represents a proxy vote.

(H) a ballot for which the envelope or postcard bears no legible postmark from the U.S. Postal Service unless it is received by the cooperative via the U.S. mail within 45 days following the date the ballot or postcard was mailed to the member.

(f) **Retention of Ballots.**

(1) A cooperative shall retain for 90 days after the end of the 45 day voting period all ballots and envelopes returned by the members in the voting process.

(2) During the 90 day retention period a cooperative shall produce the ballots and envelopes to the commission for inspection if so requested by the commission.

(g) **Reporting Requirement.** Any telephone cooperative deregulated prior to the effective date of this section shall file a letter with the commission within 30 days from the effective date of this section. Any telephone cooperative deregulated or reversing its deregulation after the effective date of this section shall file a letter with the commission within 30 days of deregulation or reversal of deregulation. The letter shall state whether the cooperative is partially deregulating or reversing deregulation, the date of the change, and whether its members approved the change. The letter shall be filed in Project Number 21122.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter I. ALTERNATIVE REGULATION

§26.175. Reclassification of Telecommunications Services for Electing Incumbent Local Exchange Companies (ILECs).

(a) **Purpose.** The provisions of this section:
- (1) establish the minimum criteria and standards for reclassifying a basic network service as a discretionary service or competitive service; or a discretionary service as a competitive service, pursuant to the Public Utility Regulatory Act (PURA) §58.024; and
- (2) to establish the procedures to be followed in petitioning for reclassification.

(b) **Application.** This section applies to electing ILECs.

(c) **General standards for reclassification of a service.** The following conditions must be satisfied in order to reclassify a service.
- (1) **Prerequisite for reclassification of a service.** The commission may not reclassify a service until each competitive safeguard prescribed by PURA Chapter 60, Subchapters B through H, is fully implemented.
- (2) **Designation of reclassification area.** An electing ILEC must designate the exchange areas for which it is seeking to reclassify each service. A reclassification area must contain the entire territory of each exchange area designated.
- (3) **Identification of services to be reclassified.** An electing ILEC must identify each service which it is seeking to reclassify and specify, for each service, whether the service is for residential lines, business lines, or both.
- (4) **Public interest standard.** The reclassification of the service is just and reasonable, is not unreasonably preferential, prejudicial, or discriminatory, or predatory or anti-competitive, and is in the public interest.
- (5) **Rate changes.** Rate changes shall be contemplated by the commission, in a separate proceeding, after reclassification has occurred.

(d) **Standards for reclassification of a basic network service as a discretionary service**. In addition to meeting the requirements in subsection (c), the following conditions must be satisfied in order to reclassify a basic network service as a discretionary service:
- (1) The service is not necessary to complete a telephone call; and
- (2) Public policy determines that the service does not need to remain in a basic network service classification.

(e) **Standards for reclassification of a basic network service or discretionary service as a competitive service.** In addition to meeting the requirements in subsection (c), the following conditions must be satisfied in order to reclassify a basic network service as a competitive service or to reclassify a discretionary service as a competitive service:
- (1) There is an alternative facilities-based provider offering the same, equivalent, or substitutable service at comparable rates, terms, and conditions in the reclassification area;
- (2) At least 60% of access lines of the type, either residential, business, or both, for which the service is provided that are located in the reclassification area have access to alternative, facilities-based providers;
- (3) Substantial barriers to entry do not exist for the relevant market;
- (4) The existing competitors have or can easily obtain additional capacity, or new competitors may easily enter the market in response to an increase in price of the electing ILEC's rates; and
- (5) The electing ILEC does not have market power sufficient to control, in a manner that is adverse to the public interest, the price of the service in the reclassification area.

(f) **Requirements for notice and contents of the application in compliance with this section.**

(1) **Notice of Application.** The electing ILEC shall provide direct notice to all Certificate of Convenience and Necessity, Service Provider Certificate of Operating Authority and Certificate of Operating Authority holders offering service in the reclassification area and direct notice to all the ILEC's customers in the reclassification area. The notice shall include a description of the requested reclassification, the service, the proposed rates, the reclassification area, other terms of the service, the types of customers likely to be affected if the application is approved, the proposed effective date for the application, the following language: "Persons who wish to comment on this application should notify the commission by (specified date, ten days before the proposed effective date), and (any other item required by the presiding officer). Requests for further information should be mailed to the Public Utility Commission of Texas, P. O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Office of Customer Protection at (512) 936-7120 or toll free at (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136."

(2) **Contents of application for each electing ILEC seeking a service reclassification.** In addition to the commission's filing requirements, one copy of the application shall be delivered to the Office of Regulatory Affairs and one copy shall be delivered to the Office of Public Utility Counsel. The application shall contain the following:

(A) A showing by the electing ILEC that the competitive safeguards in PURA, Chapter 60, Subchapters B through H have been met;

(B) For each exchange in the reclassification area, a description of the reclassification sought, the service(s) and the rates, terms, and conditions under which the service(s) is currently provided and how the proposed reclassification of the service(s) is just and reasonable and is not unreasonably preferential, prejudicial, or discriminatory, or predatory or anti-competitive;

(C) A description of the reclassification area, specifying the exchange area or areas, for which the reclassification is requested;

(D) The proposed effective date of the reclassification;

(E) A statement detailing the method and content of the notice, if any, the utility has provided or intends to provide to the public regarding the application and a brief statement explaining why the electing ILEC's notice proposal is reasonable and that the electing ILEC's notice proposal complies with applicable law;

(F) A copy of the text of the notice, if any;

(G) A showing that the relevant standards required under subsection (d) or (e) of this section, whichever is applicable, have been satisfied for each exchange in the reclassification area;

(i) An estimate of the number and size of alternative facilities-based providers offering the service to be reclassified for each exchange in the reclassification area;

(ii) The total number and percentage of the electing ILEC's subscribers of the service in the reclassification area, for each exchange, measured by number of customers and access lines;

(iii) An estimate of the electing ILEC's market share for the service, for each exchange, measured by number of customers and access lines; and

(H) An explanation of how the reclassification of the service advances the public interest for each exchange in the reclassification area.

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

(1) **Administrative review.** An application considered under this section may be reviewed administratively unless the electing ILEC requests the application be docketed or the presiding officer, for good cause, determines at any point during the review that the application should be docketed.

(A) The operation of the proposed rate schedule may be suspended for 35 days after the effective date of the application. The effective date shall be no earlier than 30 days after the filing date of the application or 30 days after public notice is completed, whichever is later.

(B) The application shall be examined for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant shall be notified within ten working days of the filing date of the specific deficiency in its application, and the earliest possible effective date of the application shall be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any time deadlines shall be determined from the 30th day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date.

(C) While the application is being administratively reviewed, the commission staff and the staff of the Office of Public Utility Counsel may submit requests for information to the electing ILEC. Six copies of all answers to such requests for information shall be filed with central records and one copy shall be provided the Office of Public Utility Counsel within ten days after receipt of the request by the electing ILEC.

(D) No later than 20 days after the filing date of the sufficient application, interested persons may provide to the commission staff written comments or recommendations concerning the application. The commission staff shall and the Office of Public Utility Counsel may file with the presiding officer written comments or recommendations concerning the application.

(E) No later than 35 days after the effective date of the application, the presiding officer shall issue an order approving, denying, or docketing the electing ILEC's application.

(2) **Approval or denial of application.** The application shall be approved by the presiding officer if the proposed reclassification complies with each requirement of this section. If, based on the administrative review, the presiding officer determines that one or more of the requirements not waived have not been met, the presiding officer shall docket the application.

(3) **Standards for docketing.** The application may be docketed pursuant to the commission's Procedural Rules §22.33(b) of this title (relating to Tariff Filings).

(4) **Review of the application after docketing.** If the application is docketed, the deadline is automatically suspended to a date 120 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after the effective date, whichever is later. Affected persons may move to intervene in the docket, and the presiding officer may schedule a hearing on the merits. The application shall be processed in accordance with the commission's rules applicable to docketed cases.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter J. COSTS, RATES AND TARIFFS

§26.201. Cost of Service.

(a) **Application.** Unless the context clearly indicates otherwise, in this section the term "utility," insofar as it relates to telecommunications utilities, shall refer to dominant certificated telecommunications utilities (DCTUs).

(b) **Components of cost of service.** Except as provided for in the Public Utility Regulatory Act (PURA), Chapters 58 and 59, or subsection (d)(2) of this section (relating to invested capital; rate base) rates are to be based upon a utility's cost of rendering service to the public during a historical test year, adjusted for known and measurable changes. The two components of cost of service are allowable expenses and return on invested capital.

(c) **Allowable expenses.** Only those expenses which are reasonable and necessary to provide service to the public shall be included in allowable expenses. In computing a utility's allowable expenses, only the utility's historical test year expenses as adjusted for known and measurable changes will be considered.

(1) **Components of allowable expenses.** Allowable expenses, to the extent they are reasonable and necessary, and subject to the rules in this section, may include, but are not limited to, the following general categories:

(A) Operations and maintenance expense incurred in furnishing normal utility service and in maintaining utility plant used by and useful to the utility in providing such service to the public. Payments to affiliated interests for costs of service, or any property, right or thing, or for interest expense shall not be allowed as an expense for cost of service except as provided in the PURA §53.058.

(B) Depreciation expense based on original cost and computed on a straight line basis as approved by the commission.

(C) Assessments and taxes other than income taxes.

(D) Federal income taxes on a normalized basis. Federal income taxes shall be computed according to the provisions of PURA §53.060.

(E) Advertising, contributions and donations. The actual expenditures for ordinary advertising, contributions, and donations may be allowed as a cost of service provided that the total sum of all such items allowed in the cost of service shall not exceed three-tenths of 1.0% (0.3%) of the gross receipts of the utility for services rendered to the public. Funds expended advertising methods by which the consumer can effect a savings in total utility bills shall be included in the calculation of the three-tenths of 1.0% (0.3%) maximum.

(F) Accruals credited to reserve accounts for self insurance under a plan requested by a utility and approved by the commission. The commission shall consider approval of a self insurance plan in a rate case in which expenses or rate base treatment are requested for such a plan. For the purposes of this rule, a self insurance plan is a plan providing for accruals to be credited to reserve accounts. The reserve accounts are to be charged with property and liability losses which occur, and which could not have been reasonably anticipated and included in operating and maintenance expenses, and are not paid or reimbursed by commercial insurance. The commission will approve a self insurance plan to the extent it finds it to be in the public interest. In order to establish that the plan is in the public interest, the utility must present a cost benefit analysis performed by a qualified independent insurance consultant that demonstrates that, with consideration of all costs, self insurance is a lower cost alternative than commercial insurance and that the ratepayers will receive the benefits of the self insurance plan. The cost benefit analysis shall present a detailed analysis of the appropriate limits of self insurance, an analysis of the appropriate annual accruals to build a reserve account for self insurance, and the level at which further accruals should be decreased or terminated.

(G) Postretirement benefits other than pensions (known in the utility industry as "OPEB"). For ratemaking purposes, expense associated postretirement benefits other than pensions (OPEB) shall be treated as follows:

(i) OPEB expense shall be included in a utility's cost of service for ratemaking purposes based on actual payments made.

(ii) A utility may request a one-time conversion to inclusion of current OPEB expense in cost of service for ratemaking purposes on an accrual basis in accordance with generally accepted accounting principles (GAAP). Rate recognition of OPEB expense on an accrual basis shall be made only in the context of a full rate case.

(iii) A utility shall not be allowed to recover current OPEB expense on an accrual basis until GAAP requires that utility to report OPEB expense on an accrual basis.

(iv) For ratemaking purposes, the transition obligation shall be amortized over 20 years.

(v) OPEB amounts included in rates shall be placed in an irrevocable external trust fund dedicated to the payment of OPEB expenses. The trust shall be established no later than six months after the order establishing the OPEB expense amount included in rates. The utility shall make deposits to the fund no less frequently than annually. Deposits on the fund shall include, in addition to the amount included in rates, an amount equal to fund earnings that would have accrued if deposits had been made monthly. The funding requirement can be met with deposits made in advance of the recognition of the expense for ratemaking purposes. The utility shall, to the extent permitted by the Internal Revenue Code, establish a postretirement benefit plan that allows for current federal income tax deductions for contributions and allows earnings on the trust funds to accumulate tax free.

(vi) When a utility terminates an OPEB trust fund established pursuant to clause (v) of this subparagraph, it shall notify the commission in writing. If excess assets remain after the OPEB trust fund is terminated and all trust related liabilities are satisfied, the utility shall file, for commission approval, a proposed plan for the distribution of the excess assets. The utility shall not distribute any excess assets until the commission approves the disbursement plan.

(2) **Expenses not allowed.** The following expenses shall never be allowed as a component of cost of service:

(A) legislative advocacy expenses, whether made directly or indirectly, including but not limited to legislative advocacy expenses included in professional or trade association dues;

(B) funds expended in support of political candidates;

(C) funds expended in support of any political movement;

(D) funds expended in promotion of political or religious causes;

(E) funds expended in support of or membership in social, recreational, fraternal, or religious clubs or organizations;

(F) additional funds expended to mail any parcel or letter containing any of the items mentioned in subparagraphs (A)-(E) of this paragraph;

(G) costs, including, but not limited to, interest expense, of processing a refund or credit of sums collected in excess of the rate finally ordered by the commission in a case where the utility has put bonded rates into effect, or when the utility has otherwise been ordered to make refunds;

(H) any expenditure found by the commission to be unreasonable, unnecessary, or not in the public interest, including but not limited to executive salaries, advertising expenses, legal expenses, penalties and interest on overdue taxes, criminal penalties or fines, and civil penalties or fines.

(d) **Return on invested capital.** The return on invested capital is the rate of return times invested capital.

(1) **Rate of return.** The commission shall allow each utility a reasonable opportunity to earn a reasonable rate of return, which is expressed as a percentage of invested capital, and shall fix the rate of return in accordance with the following principles.

(A) The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low because of changes affecting opportunities for investment, the money market, and business conditions generally.

(B) The commission shall consider the efforts and achievements of the utility in the conservation of resources, the quality of the utility's services, the efficiency of the utility's operations, and the quality of the utility's management, along with other applicable conditions and practices.

(C) The commission may, in addition, consider inflation, deflation, the growth rate of the service area, and the need for the utility to attract new capital. The rate of return must be high enough to attract necessary capital but need not go beyond that. In each case, the commission shall consider the utility's cost of capital, which is the weighted average of the costs of the various classes of capital used by the utility.

(i) Debt capital. The cost of debt capital is the actual cost of debt at the time of issuance, plus adjustments for premiums, discounts, and refunding and issuance costs.

(ii) Equity capital. For companies with ownership expressed in terms of shares of stock, equity capital commonly consists of the following classes of stock.

(I) Common stock capital. The cost of common stock capital shall be based upon a fair return on its market value.

(II) Preferred stock capital. The cost of preferred stock capital is the actual cost of preferred stock at the time of issuance, plus an adjustment for premiums, discounts, and refunding and issuance costs.

(2) **Invested capital; rate base.** The rate of return is applied to the rate base. The rate base, sometimes referred to as invested capital, includes as a major component the original cost of plant, property, and equipment, less accumulated depreciation, used and useful in rendering service to the public. Components to be included in determining the overall rate base are as set out in subparagraphs (A)-(F) of this paragraph.

(A) Original cost, less accumulated depreciation, of utility plant used by and useful to the utility in providing service.

(i) Original cost shall be the actual money cost, or the actual money value of any consideration paid other than money, of the property at the time it shall have been dedicated to public use, whether by the utility which is the present owner or by a predecessor.

(ii) Reserve for depreciation is the accumulation of recognized allocations of original cost, representing recovery of initial investment, over the estimated useful life of the asset. Depreciation shall be computed on a straight line basis.

(iii) Payments to affiliated interests shall not be allowed as a capital cost except as provided in PURA §53.058.

(B) Working capital allowance to be composed of, but not limited to the following:

(i) Reasonable inventories of materials and supplies held specifically for purposes of permitting efficient operation of the utility in providing normal utility service. This amount excludes inventories found by the commission to be unreasonable, excessive, or not in the public interest.

(ii) Reasonable prepayments for operating expenses. Prepayments to affiliated interests shall be subject to the standards set forth in PURA §53.058.

(iii) A reasonable allowance for cash working capital. The following shall apply in determining the amount to be included in invested capital for cash working capital:

(I) Cash working capital for all DCTUs shall in no event be greater than one-twelfth of total annual operations and maintenance expense, excluding amounts charged to operations and maintenance expense for materials, supplies, and prepayments.

(II) For telephone cooperatives, one-twelfth of operations and maintenance expense excluding amounts charged to operations and maintenance expense for materials, supplies, and prepayments will be considered a reasonable allowance for cash working capital.

(III) Operations and maintenance expense does not include depreciation, other taxes, or federal income taxes, for purposes of subclauses (I), (II), (V), and (VI) of this clause.

(IV) For all telephone DCTUs with 31,000 or more access lines, a reasonable allowance for cash working capital, including a request of zero, will be determined by the use of a lead-lag study. A lead-lag study will be performed in accordance with the following criteria:

(-a-) The lead-lag study will use the cash method; all non-cash items, including but not limited to depreciation, amortization, deferred taxes, prepaid items, and return (including interest on long-term debt and dividends on preferred stock), will not be considered.

(-b-) Any reasonable sampling method that is shown to be unbiased may be used in performing the lead-lag study.

(-c-) The check clear date, or the invoice due date, whichever is later, will be used in calculating the lead-lag days used in the study. In those cases where multiple due dates and payment terms are offered by vendors, the invoice due date is the date corresponding to the terms accepted by the utility.

(-d-) All funds received by the utility except electronic transfers shall be considered available for use no later than the business day following the receipt of the funds in any repository of the utility (e.g. lockbox, post office box, branch office). All funds received by electronic transfer will be considered available the day of receipt.

(-e-) For utilities the balance of cash and working funds included in the working cash allowance calculation shall consist of the average daily bank balance of all non-interest bearing demand deposits and working cash funds.

(-f-) The lead on federal income tax expense shall be calculated by measurement of the interval between the mid-point of the annual service period and the actual payment date of the utility.

(-g-) If the cash working capital calculation results in a negative amount, the negative amount shall be included in rate base.

(V) If cash working capital is required to be determined by the use of a lead-lag study under the previous subclause and either the utility does not file a lead lag study or the utility's lead-lag study is determined to be so flawed as to be unreliable, in the absence of persuasive evidence that suggests a different amount of cash working capital, an amount of cash working capital equal to negative one-twelfth of operations and maintenance expense will be presumed to be the reasonable level of cash working capital.

(VI) For all investor-owned telephone DCTUs with fewer than 31,000 access lines, cash working capital shall be calculated by any method that the commission determines to be reasonable, subject to subclause (III) of this clause.

(C) Deduction of certain items which include, but are not limited to, the following:

(i) accumulated reserve for deferred federal income taxes;

(ii) unamortized investment tax credit to the extent allowed by the Internal Revenue Code;
(iii) contingency and/or property insurance reserves;
(iv) contributions in aid of construction;
(v) customer deposits and other sources of cost-free capital;

(D) Construction work in progress. The inclusion of construction work in progress is an exceptional form of rate relief. Under ordinary circumstances the rate base shall consist only of those items which are used and useful in providing service to the public. Under exceptional circumstances, the commission will include construction work in progress in rate base to the extent that the utility has proven that:
(i) the inclusion is necessary to the financial integrity of the utility; and
(ii) major projects under construction have been efficiently and prudently planned and managed. However, construction work in progress shall not be allowed for any portion of a major project which the utility has failed to prove was efficiently and prudently planned and managed.

(E) Self insurance reserve accounts. If a self insurance plan is approved by the commission, any shortages to the reserve account will be an increase to the rate base and any surpluses will be a decrease to the rate base. The utility shall maintain appropriate books and records to permit the commission to properly review all charges to the reserve account and determine whether the charges being booked to the reserve account are reasonable and correct.

(F) Requirements for post test year adjustments.
(i) Post test year adjustments for known and measurable rate base additions (increases) to historical test year data will be considered only as set out in subclauses (I)-(IV) of this clause.
(I) Where the addition represents plant which would appropriately be recorded:
(-a-) for telecommunications utilities in USOA account 2001; or
(-b-) for telecommunications cooperatives, the equivalent of USOA account 2001.
(II) Where each addition comprises at least 10% of the utility's requested rate base, exclusive of post test year adjustments and construction work in progress (CWIP).
(III) Where the plant addition is deemed by this commission to be in-service before the rate year begins.
(IV) Where the attendant impacts on all aspects of a utility's operations (including, but not limited to, revenue, expenses and invested capital) can with reasonable certainty be identified, quantified and matched. Attendant impacts are those that reasonably follow as a consequence of the post test year adjustment being proposed.
(ii) Each post test year plant adjustment will be included in rate base at:
(I) the reasonable test year-end CWIP balance, if the addition is constructed by the utility; or,
(II) the reasonable price, if the addition represents a purchase, subject to original cost requirements, as specified in PURA §53.053.
(iii) Post test year adjustments for known and measurable rate base decreases to historical test year data will be allowed only when subclause IV of clause (i) of this subparagraph and the criteria described in subclauses (I) and (II) of this clause are satisfied.
(I) The decrease represents:
(-a-) plant which was appropriately recorded in the accounts set forth in subclause (I) of clause (i) of this subparagraph;
(-b-) plant held for future use;
(-c-) CWIP (mirror CWIP is not considered CWIP); or
(-d-) an attendant impact of another post test year adjustment.
(II) Plant that has been removed from service, mothballed, sold, or removed from the utility's books prior to the rate year.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter J. COSTS, RATES AND TARIFFS

§26.203. Rate Policies for Small Local Exchange Companies (SLECs).

(a) This subsection applies to small local exchange carriers as defined in §26.5 of this title (relating to Definitions).

(b) Notwithstanding §26.201(a) - (c) of this title (relating to Cost of Service) , a SLEC's future construction plans and operational changes may be considered in evaluating the overall reasonableness of the SLEC's current rates.

(c) The commission may not initiate an inquiry under the Public Utility Regulatory Act (PURA) §53.151 into the overall reasonableness of the current rates of a SLEC more frequently than every three years from the date of a commission order setting reasonable rates under PURA §53.151 or §53.102.

§26.205. Rates for Intrastate Access Services.

(a) **General**. Dominant certificated telecommunications utility (DCTU) rates for intrastate access services shall be established in accordance with the provisions of this section. Nothing in this section precludes a DCTU from offering new, experimental, promotional, or competitive services in accordance with other provisions of this part authorizing such offerings.

(b) **Access services.** Each DCTU's tariff must include the recurring and nonrecurring charges for all access services offered by the DCTU. A DCTU may cross-reference its federal tariff in its state tariff if its intrastate switched access rates are the same as its interstate switched access rates. A DCTU is not required to include in its access tariff any access service that its network is technologically incapable of providing. A DCTU must include in its access tariff any access service which is provided on a special assembly basis if the service is provided to more than three customers or if the service is provided at more than three locations. DCTUs are prohibited from charging intrastate end user common line charges, intrastate subscriber line charges, or similar intrastate end user charges.

(c) **Access rates.** The structure and rates for all DCTUs' intrastate switched access services shall be established in accordance with the following requirements.

(1) **Terminating common carrier line (CCL).** Each DCTU's terminating CCL rate shall not exceed $.08 per premium terminating rated access minute of use.

(2) **Premium rates.** The requirements of this paragraph apply to Southwestern Bell Telephone Company effective December 14, 1994 unless otherwise ordered by the commission. Premium access rates shall apply only to those switched access minutes that:

(A) terminate via Feature Group B;

(B) originate or terminate via Feature Group C;

(C) originate from an equal access end office via any switched access feature group;

(D) terminate to an equal access end office via any switched access feature group; or

(E) originate from a non-equal access end office and are routed over Feature Group D tandem connections.

(3) **Local switching.** There shall be one premium local switching rate element.

(4) **Local transport rate structure and pricing.** Local transport rates shall not contain unreasonable distance sensitivity. Each DCTU shall comply with subparagraphs (A)-(I) of this paragraph, unless indicated otherwise.

(A) Transport services. Each DCTU that is subject to this subparagraph shall offer transport services that consist of the following elements: entrance facilities, direct-trunked transport, tandem-switched transport, dedicated signaling transport, and a residual charge.

(B) Entrance facilities.

(i) All access customers that use the DCTU's facilities between the customer-designated point of demarcation and the serving wire center (SWC) shall be assessed a flat-rated entrance facilities charge based upon the service level ordered. Dominant certificated telecommunications utilities shall offer entrance facilities at voicegrade, DS1 and DS3 service levels.

(ii) Rates for entrance facilities shall be set no lower than 105% of the long run incremental cost (LRIC) for each service level stated in clause (i) of this subparagraph.

(iii) The DCTU may charge distance-sensitive rates for entrance facilities as enumerated in subparagraph (H) of this paragraph. Mileage shall be measured as airline mileage between the point of demarcation and the SWC.

(C) Direct-trunked transport.

(i) All access customers that use the DCTU's direct-trunked transport facilities shall be assessed a flat-rated direct-trunked transport charge based upon the service level ordered. Dominant certificated telecommunications utilities shall offer direct trunked transport at voice grade, DS1 and DS3 service levels.

(ii) Rates for direct-trunked transport facilities shall be set no lower than 105% of the LRIC for each service level in clause (i) of this subparagraph. Additionally, these rates shall be set consistent with the requirement in subparagraph (G) of this paragraph.

(iii) The DCTU may charge distance sensitive rates for direct-trunked transport, as enumerated in subparagraph (H) of this paragraph. Mileage shall be measured as airline mileage between the SWC and end office or between customer-designated points.

(iv) Centralized equal access providers are not required to provide direct-trunked transport services. DCTUs that do not have measurement and billing capabilities at their end offices are not required to provide direct-trunked transport services at those end offices.

(D) Tandem-switched transport.

(i) All access customers that use the DCTU's tandem-switched transport facilities shall be assessed the following rates:

(I) a per access minute tandem switching charge; and

(II) a per access minute tandem-switched transmission charge.

(ii) The rates for tandem-switched transport facilities shall be set no lower than 105% of the LRIC. Additionally, these rates shall be set consistent with the requirements in subparagraph (G) of this paragraph.

(iii) The DCTU may charge distance-sensitive rates for tandem-switched transmission elements, as enumerated in subparagraph (H) of this paragraph. Mileage shall be measured as airline mileage between the SWC and the end office, unless the customer has ordered tandem-switched transport between the tandem office and the end office, in which case mileage shall be measured as airline mileage between the tandem office and the end office.

(E) Dedicated Signaling Transport: Dedicated signaling transport shall be provided in accordance with the following requirements:

(i) Dedicated signaling transport shall consist of two subelements, a signaling link charge and a signaling transfer point (STP) port termination charge.

(ii) A flat-rated signaling link charge per unit of capacity shall be assessed upon all access customers that use facilities between the access customer's common channel signaling network and the DCTU's signaling transfer point or equivalent facilities. If the DCTU charges distance-sensitive rates for the signaling link, mileage shall be measured as airline mileage between the access customer's common channel signaling network and the DCTU's signaling transfer point.

(iii) A flat-rated STP port termination charge per port shall be assessed upon all access customers that use dedicated signaling transport.

(iv) Rates for dedicated signaling transport facilities shall be set no lower than 105% of the LRIC.

(F) Residual charge. The DCTU shall assess only one residual charge for each local switching access minute of use sold to those customers interconnecting with the DCTU's switched access network by ordering from the DCTU's access tariff.

(G) Transport rate differences. The rate differences between tandem-switched transport, DS1 direct-trunked transport and DS3 direct-trunked transport, shall be reasonable. The difference between the rate and 105% of the LRIC for DS1 direct-trunked transport shall

not exceed 150% of the difference between the rate and 105% of the LRIC for DS3 direct-trunked transport, on an equivalent unit of capacity basis. The difference between the rate and 105% of the LRIC for DS0 direct-trunked transport shall not exceed 150% of the difference between the rate and 105% of the LRIC for DS3 direct-trunked transport, on an equivalent unit of capacity basis. The difference between the rate and 105% of the LRIC for tandem-switched transport shall not exceed 150% of the difference between the rate and 105% of the LRIC for DS3 direct-trunked transport, on an equivalent unit of capacity basis. To determine the rate and LRIC relationships between the transport options, the tandem switch LRIC must be included in the LRIC for the tandem-switched transport option.

(H) Distance sensitive rates. If the DCTU employs distance-sensitive rates for entrance facilities, direct-trunked transport and/or tandem-switched transmission elements, they shall be assessed in the following manner:

(i) a distance-sensitive component shall be charged for the use of the transmission facilities, including intermediate transmission circuit equipment between the end points of the transmission link; and

(ii) a nondistance-sensitive component shall be charged for the use of the circuit equipment at the ends of the transmission link.

(I) Tariff provisions.

(i) Tariffs shall not contain resale or sharing restrictions for switched transport services.

(ii) Initial tariffs filed in compliance with this section may be filed pursuant to §26.209 of this title (relating to New and Experimental Services). Initial tariff amendments shall not be permitted to become effective before expanded interconnection for switched transport services becomes available from the DCTU for those DCTUs subject to substantive rule §26.271 of this title (relating to Expanded Interconnection).

(iii) DCTUs not subject to substantive rule §26.215 of this title (relating to Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility (DCTU) Services) may propose charges that are the same as the charges in effect for the carrier's interstate provision of the same service or adopt the switched transport rates of another DCTU that are developed pursuant to the requirements of this section.

(iv) Within 120 days after the completion of LRIC cost studies required by substantive rule §26.215 of this title, any DCTU subject to that rule shall file tariff amendments in order to revise its local transport rates in conformity with this section based upon the new LRIC cost studies.

(5) **Lower rates.** Nothing in this subsection prevents a DCTU from charging a lower rate for any rate element than the amount specified herein; however, no DCTU shall charge any rate for switched access that is not contained in its switched access tariff.

(6) **Rounding.** The rates for all access services shall be assessed using conventional rounding of fractional units of applicable billing units, i.e., a fraction equal to or greater than 0.5 of one unit will be rounded up to the next higher whole unit, while fractions less than 0.5 of one unit will be rounded down to the next lower whole unit, except that local transport mileage may be rounded up to the next whole mile.

(d) **Administrative provisions.** The intrastate access service tariff of all DCTUs must contain, at a minimum, the requirements stated in paragraph (1) - (3) of this subsection, relating to percent interstate usage (PIU).

(1) **Jurisdictional determination capability.** If the DCTU possesses the network capability to determine the jurisdiction of an access service, a monthly PIU, based upon the actual jurisdictional

determination of access services used by the access customer, must be calculated by the DCTU and applied to the monthly bill for each access customer.

(2) **No jurisdictional determination capability.** If a DCTU's network facilities are incapable of making a determination of the jurisdiction of an access service, such DCTU shall establish guidelines in its access tariff that permit an access customer to self-report. PIUs may be self-reported by access customers to DCTUs if all of the requirements of subparagraphs (A) - (F) of this paragraph are met.

(A) A DCTU must request and receive written representation from the self-reporting access customer that the access customer possesses a network technology or has established other reasonable methods which it can accurately determine the jurisdiction of each access service used by the access customer.

(B) The DCTU must request and receive a written representation from the access customer that the access customer calculates self-reported PIUs based upon the actual jurisdiction of each access service used by the access customer.

(C) The DCTU must request and receive from the access customer, at a minimum, an annual report supporting the self-reported PIUs.

(D) The DCTU's intrastate access tariff must establish a monitoring procedure for the annual monitoring of all self-reported PIUs and an auditing procedure for timely auditing of questionable self-reported PIUs.

(E) The DCTU's intrastate access service tariff must contain an adjustment procedure for the correction of up to 12 months of access service bills which were based upon an erroneous PIU as determined through a PIU audit.

(F) The DCTU's intrastate access tariff must specify that the DCTU is responsible for verifying the accuracy of the PIU report and the access customer is responsible for the accuracy of self-reported PIUs.

(3) **Default PIU.** If the DCTU's network facilities are incapable of determining call jurisdiction and the access customer fails to exercise its self-reporting option under paragraph (2) of this subsection, the DCTU must provide written notice to the access customer by certified mail that, if the customer fails to exercise one of its options within 30 days of receipt of such notice, a PIU will be established at 50%. Nothing in this paragraph prohibits the DCTU from auditing such access customer. If such an audit is conducted, the results of such audit will be used to determine that access customer's PIU.

§26.206. Depreciation Rates.

(a) **General.** Dominant certificated telecommunications utilities (DCTUs) shall use depreciation rates approved by the commission to determine depreciation expense and provide for accumulated depreciation (also referred to as depreciation reserve). For purposes of this section, depreciation rates used prior to September 1, 1976, and those in effect on September 1, 1976, shall be deemed appropriate for use, unless subsequently modified by the commission.

(b) **Depreciation rate changes for telecommunications utilities subject to regulation of interstate depreciation rates by the Federal Communications Commission.** Telecommunications utilities subject to interstate regulation by the Federal Communications Commission are also required to file for commission approval of intrastate depreciation rates. Filings should be made in the same format and on the same schedule as those required by the federal regulatory body, with the addition of proposed intrastate accrual changes calculated through use of jurisdictional separations procedures. The utility shall have the burden of proof to establish that requested intrastate depreciation rate changes are reasonable and in the public interest in proceedings before the commission.

(c) **Depreciation rate changes for other dominant carriers.** Any DCTU, except as covered in subsection (b) of this section, requesting a change in depreciation rates must request commission approval and include in its request the information set out in paragraphs (1) - (3) of this subsection.

(1) For each property account or subaccount for which a depreciation rate change is proposed:

(A) the plant in service and the accumulated depreciation as of the requested effective date for the proposed depreciation rates;

(B) the total of accruals, additions, retirements, gross salvage, and cost of removal for each of the preceding 4 years; and

(C) detailed justification for the proposed changes.

(2) The requested effective date of the changes. A request for an effective date that is earlier than January 1st of the year in which the request is filed must be fully justified in order to receive consideration.

(3) The change in annual depreciation expense that would result from adoption of the proposed depreciation rates, expressed both as a dollar amount and as a percentage of current total depreciation expense.

(d) **Methods for figuring depreciation rates.** On application by a utility, the commission shall fix depreciation rates that promote deployment of new technology and infrastructure. In setting depreciation rates, the commission shall consider depreciation practices of nonregulated telecommunications providers. Depreciation rates must be based on reasonable methods of depreciation; however, the commission reserves the right to specifically consider any and all appropriate methods of depreciation in each case.

(e) **Burden of proof.** A DCTU shall have the burden of proof to show that depreciation or amortization expense is reasonable, necessary and in the public interest. The DCTU shall also be required to show that depreciation rate changes were timely requested in accordance with prudent management practices. The burden of proof shall not be satisfied solely by demonstrating that the depreciation rates or amortization periods used were approved. If the DCTU fails to meet this burden the commission may deny as a cost of service that depreciation or amortization expense.

(f) **Interim booking.** Unless otherwise ordered by the commission, a DCTU may book depreciation and amortization expense on an interim basis based on proposed depreciation rates from the month of filing until interim or final action by the commission. Interim booking shall be adjusted upon final approval of

depreciation rates and records must be maintained showing the interim booking and the adjustments, if any, that were made upon final approval of the rates.

(g) **Special amortization.** Where all or a substantial portion of a property account or subaccount is retired earlier than anticipated and the reserve for that account is less than the amount to be retired less salvage, or in other instances when an amortization is appropriate, special amortization may be requested.

(1) If the amortization period is two years or less, and the annual amount to be amortized is less than 2.0% of annual revenues, the DCTU shall advise the commission. The commission may review the appropriateness of such amortization during rate cases.

(2) If the amortization period is more than two years, or the amount to be amortized is more than 2.0% of annual revenues, commission approval is required.

(h) **New depreciation rates.** When a DCTU determines a need to establish a new depreciation rate for a new class of property, it may adopt a depreciation rate that has been approved by the commission for a similar DCTU for the same property class if similar depreciation parameters and methods are used to determine the rates. The DCTU must notify the commission that it has adopted such rates within 45 days of its adoption. The commission may review and modify such rates upon appropriate motion or in subsequent rate or depreciation proceedings.

(i) **Public Utility Regulatory Act (PURA), Chapter 58 companies.** A company electing under PURA Chapter 58 may determine its own depreciation rates and amortizations, but shall notify the commission of any subsequent changes to the rates or amortizations. Such company shall notify the commission using the same format required by the Federal Communications Commission for depreciation and amortization filings.

§26.207. Form and Filing of Tariffs.

(a) **Application**. Unless the context clearly indicates otherwise, in this section the term "utility" insofar as it relates to telecommunications utilities, shall refer to dominant carriers.

(b) **Purpose.** The purpose of this section is to establish procedures and standards for the form, filing and review of dominant certificated telecommunications utilities' (DCTUs) tariffs.

(c) **Effective tariff**. No utility shall directly or indirectly demand, charge, or collect any rate or charge, or impose any classifications, practices, rules, or regulations different from those prescribed in its effective tariff filed with the commission.

(d) **Requirements as to size, form, identification and filing of tariffs.**

(1) Every public utility shall file with the commission filing clerk five copies of its tariff containing schedules of all its rates, tolls, charges, rules, and regulations pertaining to all of its utility service when it applies for a certificate of convenience and necessity to operate as a public utility. It shall also file five copies of each subsequent revision. Each revision shall be accompanied by a cover page which contains a list of pages being revised, a statement describing each change, its effect if it is a change in an existing rate, and a statement as to impact on rates of the change by customer class, if any. If a proposed tariff revision constitutes an increase in existing rates of a particular customer class or classes, then the commission may require that notice be given.

(2) All tariffs shall be in loose-leaf form of size 8 1/2 inches by 11 inches and shall be plainly printed or reproduced on paper of good quality. The front page of the tariff shall contain the name of the utility and location of its principal office and the type of service rendered (telephone, electric, etc.).

(3) Each rate schedule must clearly state the territory, city, county, or exchange wherein said schedule is applicable.

(4) Tariff sheets are to be numbered consecutively per schedule. Each sheet shall show an effective date, a revision number, section number, sheet number, name of the utility, the name of the tariff, and title of the section in a consistent manner. Sheets issued under new numbers are to be designated as original sheets. Sheets being revised should show the number of the revision, and the sheet numbers shall be the same.

(5) Any telecommunications utility, after a declaration by the commission that it is a dominant carrier, shall file tariffs complying with the above requirements. These tariffs shall be filed within the time specified in the commission order finding the telecommunications utility a dominant carrier, or within 60 days in the absence of such a specification.

(e) **Composition of tariffs**. The tariff shall contain sections setting forth:

(1) a table of contents;

(2) a preliminary statement containing a brief description of the utility's operations;

(3) a list of the cities, exchanges, and counties in which service is provided;

(4) the rate schedules; and

(5) the service rules and regulations, including forms of the service agreements.

(f) **Tariff filings in response to commission orders.** Tariff filings made in response to an order issued by the commission shall include a transmittal letter stating that the tariffs attached are in compliance with the order, giving the docket number, date of the order, a list of tariff sheets filed, and any other necessary information. The tariff sheets shall comply with all other rules in this chapter and shall include only changes ordered. The effective date and/or wording of the tariffs shall comply with the provisions of the order.

(g) **Symbols for changes.** Each proposed tariff sheet shall contain notations in the right-hand margin indicating each change made on these sheets. Notations to be used are: (C) to denote a change in regulations; (D) to denote discontinued rates or regulations; (E) to denote the correction of an error made during a revision (the revision which resulted in the error must be one connected to some material contained in the tariff prior to the revision); (I) to denote a rate increase; (N) to denote a new rate or regulation; (R) to denote a rate reduction; and (T) to denote a change in text, but no change in rate or regulation. In addition to symbols for changes, each changed provision in the tariff shall contain a vertical line in the right-hand margin of the page which clearly shows the exact number of lines being changed.

(h) **Availability of tariffs.** Each utility shall make available to the public at each of its business offices or designated sales offices within Texas all of its tariffs currently on file with the commission, and its employees shall lend assistance to persons seeking information on its tariffs and afford inquirers an opportunity to examine any tariff upon request. The utility also shall provide copies of any portion of its tariffs at a reasonable cost.

(i) **Effective date of tariff change.** No jurisdictional tariff change may take effect prior to 35 days after filing without commission approval. The requested date will be assumed to be 35 days after filing unless a different date is requested in the application. The commission may suspend the effective date of the tariff change for 120 days after the requested effective date and may extend that suspension another 30 days if required for final determination. In the case of an actual hearing on the merits of a case that exceeds 15 days, the suspension date is extended two days for each one day of actual hearing in excess of 15 actual hearing days.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter J. COSTS, RATES AND TARIFFS

§26.208. General Tariff Procedures.

(a) **Application**. This section applies to dominant certificated telecommunications utilities (DCTUs) as defined by §26.5 of this title (relating to Definitions).

(b) **Purpose.** The procedures outlined in this section establish a process for the review of DCTU tariff applications.

(c) **Content of public notice.** The DCTU shall include public notice plans in its application to the commission. Notices shall be written in plain language and shall contain sufficient detail to give customers and affected parties adequate notice of the filing. The presiding officer may require notice to be provided to the public in addition to that proposed by the DCTU. Public notice of the application shall include at a minimum:

(1) a description of the proposed service and rates;

(2) the proposed effective date of the service or, if the service is promotional or experimental, the time period during which the promotional rates are proposed to be in effect;

(3) the types of customers likely to be affected if the application is approved;

(4) the probable effect on the DCTU's revenues if the service is approved;

(5) and the following language: "Persons with questions or who want more information on this application may contact (DCTU name) at (DCTU address) or call (DCTU toll-free telephone number) during normal business hours. A complete copy of the application is available for inspection at the address listed above. The commission has assigned Control Number (provided by DCTU) to this application. Persons who wish to formally participate in the commission's proceedings concerning this application, or who wish to express their comments concerning this application should contact the Public Utility Commission of Texas, Office of Customer Protection, PO Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission's Office of Customer Protection at (512) 936-7120 or, toll free, at (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or reach the commission's toll free number through Relay Texas at (800) 735-2988. Requests to participate in the proceedings and comments should reach the commission no later than (date, ten days before the effective date of the proposed filing)."

(d) **Proof of notice.** Not less than ten days before the effective date of the application, the DCTU shall file a statement indicating the date on which all notice provided to the public was completed and proof of such notice.

(e) **Administrative review.** An application filed pursuant to §26.207 of this title (relating to Form and Filing of Tariffs), §26.209 of this title (relating to New and Experimental Services), §26.210 of this title (relating to Promotional Rates for Local Exchange Company Services), or §26.211 of this title (relating to Rate Setting Flexibility for Services Subject to Significant Competitive Challenges) shall be reviewed administratively unless the presiding officer, for good cause, determines at any point during the review that the application should be docketed. The operation of the proposed rate schedule may be suspended for 35 days after the effective date of the application. The effective date shall be no earlier than 30 days after the filing date of the application or 30 days after public notice is completed, whichever is later. The application shall be examined for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant shall be notified within ten working days of the filing date of the specific deficiency in its application, and the earliest possible effective date of the application shall be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any time deadlines shall be determined from the 30th day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that

date. While the application is being administratively reviewed, the commission staff and the staff of the Office of Public Utility Counsel may submit requests for information to the DCTU. Three copies of all answers to such requests for information shall be provided to the commission staff and the Office of Public Utility Counsel within ten days after receipt of the request by the DCTU. No later than 20 days after the filing date of the application, interested persons may provide to the commission staff written comments or recommendations concerning the application. The commission staff shall and the Office of Public Utility Counsel may file with the presiding officer written comments or recommendations concerning the application. No later than 35 days after the effective date of the application, the presiding officer shall complete an administrative review to determine whether the DCTU's application meets the following requirements:

(1) The proposed service meets all requirements pursuant to the applicable section under which it is filed;
(2) Notice was provided as required by the presiding officer;
(3) The proposed rates and terms of the service are not unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive; and
(4) Provision of the service is consistent with the public interest in a technologically advanced telecommunications system, the preservation of universal service, and the prevention of anticompetitive practices and of subsidization of new and experimental services with revenues from regulated monopoly services.

(f) **Approval or denial of applications.** For its application to be approved, the DCTU must meet all of the requirements in the applicable section pursuant to which the application is made, unless such requirements are modified or waived by the presiding officer as provided under provisions of that section. If, based on the administrative review, the presiding officer determines that all requirements not waived have been met, the DCTU shall be permitted to offer the service at the rates and terms approved by the presiding officer. If, based on the administrative review, the presiding officer determines that one or more of the requirements not waived have not been met, the presiding officer may dismiss or, upon prior request of the DCTU, shall docket the application.

(g) **Review of the applications after docketing.** If the application is docketed, the operation of the proposed rate schedule shall be automatically suspended to a date 120 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after the effective date, whichever is later. Three copies of all answers to requests for information shall be filed with the commission within ten days after receipt of the request. Affected persons may move to intervene in the docket, and a hearing on the merits shall be scheduled. The application shall be processed in accordance with the commission's rules applicable to docketed proceedings.

(h) **Withdrawal of a service.** When a DCTU seeks to withdraw a tariffed service, the application shall be filed pursuant to this subsection and shall be docketed to allow adequate time for review, and completion of notice. The DCTU shall provide direct mail notice to all current customers of the service and shall issue such notice only after the commission has reviewed and approved the notice. The DCTU shall provide the following information in its application:

(1) The number of current subscribers in each exchange;
(2) The reason for withdrawing the service;
(3) Provisions for grandfathering current customers or competitive alternatives available within the exchange locations, including DCTU provided alternatives;
(4) Annual revenues for the last three years for the service; and
(5) If the service has no current subscriber, the DCTU shall provide an affidavit to this effect.

(i) A DCTU that is not subject to rate-of-return regulation under Public Utility Regulatory Act, Chapter 53:

(1) may, but is not required to maintain on file with the commission tariffs, price lists, or customer service agreements governing the terms of providing service;

(2) may cross-reference its federal tariff in its state tariff if its intrastate switched access rates are the same as its interstate switched access rate;

(3) may withdraw a tariff, price list, or customer service agreement not required to be filed or maintained with the commission under this section if it:

(A) files written notice of the withdrawal with the commission; and

(B) notifies its customers of the withdrawal and posts the current tariffs, price lists, or generic customer service agreements on its Internet website.

§26.209. New and Experimental Services.

(a) **Application.** This section applies to dominant certificated telecommunications utilities (DCTUs), as that term is defined by §26.5 of this title (relating to Definitions). In addition, the services to which this section applies are those that are a subset of a service for which the utility is dominant.

(b) **Purpose.** The procedures in this section establish the process by which DCTUs obtain approval to offer new and experimental services.

(c) **Filings requesting approval of new and experimental services.** A DCTU may request approval of a new or experimental service by following the procedures outlined in this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the Office of Regulatory Affairs and one copy to the Office of Public Utility Counsel. Nothing in this section precludes a DCTU from utilizing other provisions of this title to seek approval to offer such services, however, the commission or the presiding officer, in its discretion, may require any application for a new or experimental service to comply with the requirements of this section. Not later than 30 days prior to the proposed effective date of the new or experimental service, the DCTU shall file with the commission and the Office of Public Utility Counsel an application containing the following information:

(1) a statement of intent by the DCTU to use the procedures established in this section;

(2) a description of the proposed service and the rates, terms and conditions under which the service is proposed to be offered;

(3) the proposed effective date of the service;

(4) a statement detailing the type of notice, if any, the utility has provided or intends to provide to the public regarding the application and a brief statement explaining why the DCTU's notice proposal is reasonable and in compliance with **§**26.208(c) of this title (relating to General Tariff Procedures);

(5) a copy of the text of the notice, if any;

(6) detailed documentation showing that the proposed service is priced above the long run incremental cost of such service. The commission shall allow an incumbent local exchange carrier (LEC) that is not a Tier 1 LEC as of September 1, 1995, at that company's option, to adopt the cost studies approved by the commission for a Tier 1 LEC. The application shall also include projections of revenues, demand, and expenses demonstrating that in the second year after the service is first offered, the proposed rates will generate sufficient annual revenues to recover the annual long run incremental costs of providing the service, as well as a contribution for joint and/or common costs. Capital costs related to providing the service shall be separately identified in these projections. The application shall also include all workpapers and supporting documentation relating to computations or assumptions contained in the application.

(7) If the application concerns a service which will not initially be offered system-wide, the application shall separately explain for each exchange in which the service will not be offered why the DCTU's facilities in that exchange do not have the technical capability to handle the service. The application shall also include an implementation plan which shall specify the DCTU's plans for making the service available in such exchanges within a reasonable time after receipt by the LEC of a bona fide request for the service. The DCTU shall also specify in its plan what requirements must be met for a request for service to be considered bona fide. This requirement does not apply to experimental services, but the DCTU shall specify the exchanges in which it proposes to offer the experimental service.

(8) If the application concerns an experimental service for which a range of rates is proposed, the application shall state the range of rates requested and show in detail how the upper and lower rates in that range relate to the long run incremental cost of the service.

(9) Any other information which the DCTU wants considered in connection with the commission's review of its application.

(d) **Modifications and waivers of requirements.** In its application a DCTU may request and the commission or the presiding officer may grant for good cause the modification or waiver of requirements set forth in this section concerning system-wide rates; system-wide provision of service; the one-year maximum period for offering an experimental service; the one-year, cost-related prove-in period; or long run incremental cost support. Subsequent to the introduction of an experimental service, a DCTU may also apply for modification of the period initially approved for offering the service. However, no experimental service shall be approved for more than two years, no prove-in period shall be extended beyond two years and, in lieu of incremental cost information, the DCTU must provide other cost support demonstrating that the proposed rates for the service will recover its costs plus a contribution within the required period. A waiver of the incremental cost standard shall only be granted if the presiding officer determines that such a standard imposes an unreasonable burden on a DCTU which has inadequate resources to produce the required cost information to meet that standard and if the presiding officer determines that an appropriate alternative cost standard is available. Any request for modification or waiver of these requirements shall include a complete statement of the DCTU's arguments supporting that request. The presiding officer shall rule on the waiver request within 15 days of the filing of the request. A copy of the presiding officer's ruling shall be provided to the commission, and the commission may overrule any waiver granted by a presiding officer within 15 days of the presiding officer's ruling.

(e) **Requirements for proposed new and experimental services.** Unless waived or modified by the presiding officer as provided under subsection (d) of this section, the following requirements shall apply to any new service approved under this section:

(1) Such new service shall be offered at the same price throughout the DCTU's system.

(2) The service shall also be offered in every exchange served by the DCTU, except exchanges in which the DCTU's facilities do not have the technical capability to handle the service.

(3) The rates for a new service shall be designed to generate sufficient annual revenues to recover the annual long run incremental cost of the service, including a contribution for joint and/or common costs, in the second year after it is first offered. Requirements related to system-wide pricing and system-wide provision of service do not apply to a proposed experimental service.

(4) An experimental service approved under this section may be flexibly priced provided that the minimum rate in the range of rates shall be above the long run incremental cost of providing the service. The DCTU may make a change in rates within an approved range of rates upon such notice to customers and the commission as the presiding officer may require. In addition, before discontinuing provision of an experimental service, the DCTU shall give such notice of the discontinuation as the presiding officer may require.

(f) **Interim rates.** For good cause, interim rates may be approved after docketing. However, interim rates shall not be approved if the new service requires substantial initial investment by customers before they may receive the service unless the commission requires the DCTU to notify every customer prior to purchasing the service that this investment is at risk due to the interim nature of the service and the rates for the service and unless the DCTU makes appropriate provisions to protect its customers from the risks of the DCTU's failure to notify.

(g) **Reporting requirements.** If a new service is approved based on either an administrative review or a docketed proceeding, the DCTU shall file with the commission tracking reports showing the actual revenues; demand and related expenses for the service; its progress on the implementation plan, if any such plan was approved by the commission; and such other information as may be required by the commission (or, in connection with an administrative review, by the presiding officer) or requested by the commission staff. One such report shall be due nine months after the service is first offered and shall contain information for at least the first six months the service was offered. The second such report shall be filed 12 months after the service is first offered and shall contain information for at least the first nine months the

service was offered. The third such report shall be filed no later than 15 months after the service is first offered and shall contain information for at least the first 12 months the service was offered. Such reporting requirements shall be waived for experimental services of one year's duration or less, but the DCTU shall retain in its record such information related to revenues, demand and expenses and shall submit such information with any subsequent request to make a formerly experimental service a permanent new service.

(h) **Subsequent review of the service.** Except as prohibited by the Public Utility Regulatory Act Chapters 58 or 59, if a new or experimental service is approved under the procedures set forth in this section, the commission staff or any affected person may file with the commission a petition seeking modification of the rates or terms under which the service is offered or withdrawal of the service.

(i) **Provisions for SLECs.** Notwithstanding §26.208(e) of this title (relating to General Tariff Procedures) and subsections (c),(d), and (e) of this section, the provisions of this subsection apply to a small local exchange company (SLEC) as defined in §26.5 of this title (relating to Definitions). If the presiding examiner determines that the SLEC is seeking to adopt as its rates for its new or experimental services the rates for the same or substantially similar services offered by a incumbent local exchange company:

(1) the SLEC's proposed rates and terms of the service will be deemed not to be unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive; and

(2) a waiver of the incremental cost standard shall be granted.

§26.210. Promotional Rates for Local Exchange Company Services.

(a) **Application.** This section applies to dominant certificated telecommunications utilities (DCTUs) as that term is defined by §26.5 of this title (relating to Definitions) which are subject to the ratemaking jurisdiction of the commission for any service or market.

(b) **Purpose.** The procedures outlined in this section are intended to establish a process by which DCTUs may obtain authorization for offering promotional rates for the purpose of increasing long term demand for a service and/or utilizing unused capacity of the DCTU's network.

(c) **Filings requesting approval of promotional rates.** After the effective date of this section, a DCTU may request approval of promotional rates for a service by following the procedures outlined in this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the Regulatory Division. Nothing in this section precludes a DCTU from utilizing other provisions of this title to offer such promotional rates. Not later than 30 days prior to the proposed effective date of the promotional rate, the DCTU shall file with the commission and the Office of Public Utility Counsel an application containing the following information:

(1) a statement of intent by the DCTU to use the procedures established in this section;

(2) a description of the specific proposed or tariffed service for which promotional rates are proposed and a description of the temporary rates for such service proposed by the DCTU;

(3) if the promotional rates are proposed to be offered on less than a system-wide basis as provided in subsection (d) of this section, a description of the locations for which the promotional rates are proposed:

(4) the starting date and ending date of the period over which the promotional rates are proposed to be offered;

(5) a description of all time periods during the five years preceding the filing of this application for which promotional rates were offered for the service as authorized under this section;

(6) a statement detailing the type of notice, if any, the DCTU has provided or intends to provide to the public regarding the application and a brief statement explaining why the DCTU's notice proposal is reasonable and in compliance with **§**26.208(c) of this title (relating to General Tariff Procedures);

(7) a copy of the text of the notice, if any;

(8) detailed documentation showing the long run incremental cost of the service for which promotional rates are requested, including projections of revenues, demand and expenses of the service for the period during which the promotional rates are proposed to be offered. The commission shall allow an incumbent local exchange company (LEC) that is not a Tier 1 LEC as of September 1, 1995, at that company's option, to adopt the cost studies approved by the commission for a Tier 1 LEC. The application shall include projections of the effect of the promotional rate on the service's revenues and cost and its impact on the service's contribution during the promotional period and over the remaining life of the service. The application shall also include all workpapers and supporting documentation relating to computations or assumptions contained in the application; and

(9) any other information which the DCTU wants considered in connection with the commission's review of its application.

(d) **Modification and waivers of requirements.** In its application a DCTU may request the waiver of the long run incremental cost requirements set forth in this section. Such a waiver shall only be granted if the presiding officer determines that the long run incremental cost standard imposes an unreasonable burden on a DCTU which has inadequate resources to produce the required cost information to meet the standard and if the presiding officer determines that an appropriate alternative cost standard is available. If the long run incremental cost standard is waived, the DCTU must provide other cost information showing the relationship between its proposed promotional rates and the costs of providing the service. A DCTU may also request a waiver of the requirement that promotional rates be offered in every exchange when such

rates are proposed to be offered for a tariffed service which is being expanded into central offices which previously did not provide the service. Any request for waiver of the long run incremental cost information requirement or the system-wide application of the promotional rates requirement shall include a complete statement of the DCTU' arguments supporting that request.

(e) **Notice of intent to file.** At least ten days before any application under this section may be filed by a DCTU, the DCTU shall file a statement of intent to file such an application and the expected filing date. Such notice shall also include a statement of the DCTU's intent to use the expedited procedures of this section, a description of the service, and a description of the proposed promotional rates and the proposed promotional period. The commission shall then publish notice of the DCTU's intent to file such application in the *Texas Register*.

(f) **Requirements for promotional rates.** Unless waived or modified by the presiding officer as provided in subsection (d) of this section, the following requirements shall apply to promotional rates approved under this section:

(1) the promotional rates shall be offered in every exchange in which the service is offered throughout the DCTU's system;

(2) promotional rates for any particular service in any specific exchange shall not be offered for more than six months during any five-year period, and no customer shall be charged promotional rates for more than three consecutive months;

(3) promotional rates shall be offered only to new customers of a service or to new and existing customers, provided that, for existing customers, the promotional rates shall only apply to additional units of service ordered during the promotional rate period; and

(4) the promotional rate shall be designed to generate sufficient revenue to recover the long run incremental cost of providing the service (or, if the long run incremental cost standard is waived, such other costs as are approved by the commission) within one year of introduction of the promotional rate. If the proposed promotional rate is for the reduction or elimination of an installation charge or service connection charge, the revenue and costs related to provision of the entire service shall be used in determining whether the cost standard for the service is met. If the proposed promotional rate is for a service whose tariffed rate does not recover the costs of providing the service, a promotional rate may be approved if the DCTU can demonstrate that the promotional rate will move the service closer to full cost recovery. However, no promotional rate shall be approved for a service whose tariffed rate does not recover the cost of the service if such service has been found to be subject to significant competition under §26.211 of this title (related to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges) or if the service is enumerated in the Public Utility Regulatory Act §52.057. The commission may approve a promotional rate even if it does not provide a contribution to joint and common costs.

(g) **Notification to the public of services to be offered at promotional rates.** If promotional rates for a service are approved under this section, all advertising related to such service and its promotional rates shall clearly describe the temporary nature of the rate, the date on which the promotional rate will expire, and the rate which will apply after expiration of the promotional rate. The DCTU shall provide the same information to all customers requesting rate information for such service or ordering the service during the period the promotional rates are in effect.

(h) **Reporting requirements.** If promotional rates are approved based on either an administrative review or a docketed proceeding, the DCTU shall file with the commission a report showing the actual revenues, demand and related expenses and investment for the service over each period promotional rates are in effect. This report shall be filed with the commission within three months after each authorized period for offering promotional rates has expired.

(i) **Treatment of revenues and expenses related to promotional rates in subsequent rate cases.** In any subsequent rate case in which a service was offered at promotional rates during the test year, the revenues attributed to such service shall be adjusted upward to reflect the revenues which would have been collected if all customers who were charged the promotional rate had been charged the permanent tariffed rate over the promotional period.

(j) **Subsequent review of the promotional rates.** If promotional rates for a service are approved under the procedures set forth in this section, the commission's Office of Regulatory Affairs, the Office of Public Utility Counsel, or any affected person may file with the commission a petition seeking modification of the rates or terms under which the promotional rate is offered or withdrawal of the promotional rate. If multiple promotional rate periods are approved for a service under the provisions of this section and if the reports filed in accordance with subsection (h) of this section indicate that the rates for the service did not recover the costs of the service as required in subsection (f) of this section, the commission shall initiate an inquiry into the reasonableness of such promotional rates and shall suspend those rates pending the completion of the inquiry.

(k) **Provisions for SLECs**. Notwithstanding §26.208(e) of this title (relating to General Tariff Procedures) and subsections (c), (d), and (f) of this section, the provisions of this subsection apply to a small local exchange company (SLEC) as defined in §26.5 of this title (relating to definitions). If the presiding examiner determines that the SLEC is seeking to adopt as its promotional rates for its services the rates for the same or similar services offered by an incumbent local exchange carrier:

(1) the SLEC's proposed rates and terms of the service will be deemed not to be unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive; and

(2) a waiver of the incremental cost standard shall be granted.

§26.211. Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges.

(a) **Application.** The provisions of this section apply to incumbent local exchange companies (ILECs), as defined by §26.5 of this title (relating to Definitions). This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under PURA §52.154.

(b) **Purpose.** The purpose of this section is to establish procedures for pricing flexibility for services subject to competition and a process for the review of pricing flexibility applications.

(c) **Pricing flexibility.**

(1) The types of pricing flexibility that an incumbent local exchange company (ILEC) may request are set forth in subparagraphs (A)-(C) of this paragraph.

(A) Banded rates. If an ILEC is granted the authority to charge banded rates, the minimum rates shall yield revenues that are equal to or greater than 105% of the long run incremental cost of the service in the geographic market in which the service will be provided. When an ILEC is granted the authority to charge banded rates, the ILEC shall file a tariff showing the minimum and maximum rates and specifying its current rate. The current rate, as specified in the ILEC's tariff, shall be applied uniformly to all customers of the service in each exchange for which the commission has approved banded rates. If the ILEC desires to charge a rate different from its current rate, but between the minimum and maximum rates, it shall file a revised tariff on or before the effective date of the rate change. The minimum and maximum rates may only be changed as provided for in the Public Utility Regulatory Act, Chapter 53, Subchapters C and D, or G.

(B) Detariffing. If an ILEC is granted the authority to detariff a service, the ILEC shall maintain at the commission a current price list for the service, and the commission shall retain authority to regulate the quality, terms and conditions of the detariffed service, other than rates. The commission may determine the appropriate ratemaking treatment of any revenues from or costs of providing a detariffed service in a proceeding under the Public Utility Regulatory Act, Chapter 53, Subchapters C and D, or G.

(C) Other types of pricing flexibility. If an ILEC is granted the authority to engage in a type of pricing flexibility that the commission finds to be in the public interest other than those specified in subparagraphs (A)-(B) of this paragraph, that pricing flexibility shall be offered under such terms and conditions as the commission orders.

(2) ILECs have the authority to enter into customer-specific contracts for those services specified in subsection (d) of this section. For those services, ILECs may apply to the commission pursuant to this subsection to obtain a type of pricing flexibility specified in paragraph (1) of this subsection other than customer-specific contracts. For other services, ILECs may apply to the commission pursuant to this subsection to obtain any type of pricing flexibility specified in paragraph (1) of this subsection. However, nothing in this subsection shall permit an ILEC to obtain pricing flexibility for basic local telecommunications service, including local measured service, or for any service that includes as a component a service not subject to significant competitive challenge. Additionally, nothing in this subsection shall permit an ILEC to enter into customer-specific contracts or to obtain detariffing with respect to message telecommunications services, switched access services, or wide area telecommunications service.

(3) An application for pricing flexibility filed under this paragraph shall:

(A) include a statement of the ILEC's intention to use the procedures established in this subsection;

(B) specify the type of pricing flexibility requested and, if the type of pricing flexibility requested is either banded rates or some other type of pricing flexibility pursuant to paragraph (1)(C) of this subsection that involves rate-setting;

(i) state the proposed rates, and if the type of pricing flexibility is banded rates, state the maximum and minimum rates;

(ii) include detailed documentation demonstrating that the minimum rates yield revenues that are equal to or greater than 105% of the long run incremental cost of the service in the geographic market in which the service will be provided;

(iii) demonstrate that the rates are not unreasonably preferential, prejudicial or discriminatory;

(iv) demonstrate that the rates are such that the service identified pursuant to subparagraph (C) of this paragraph will not be subsidized directly or indirectly by regulated monopoly services; and

(v) demonstrate that the rates are not predatory or anticompetitive;

(C) identify the service for which the ILEC is requesting pricing flexibility, including each component thereof, and provide functional and technical descriptions of the service, including:

(i) the functions that the service is intended to perform for the customer;

(ii) the types of equipment used to provide the service (including, but not limited to, transmission facilities, switching facilities, customer equipment, software functions, and protocol);

(iii) the network configurations used to provide the service; and

(iv) schematics;

(D) identify each service that is not subject to significant competitive challenge but that, at the time the ILEC files its application for pricing flexibility, the ILEC intends to provide as a tariffed adjunct to the service identified in subparagraph (C) of this paragraph and, for each such service, provide:

(i) functional and technical descriptions; and

(ii) citations to the tariff provisions pursuant to which each such service will be provided;

(E) designate the exchange(s) as to which the ILEC is seeking pricing flexibility;

(F) include a map or maps of the exchange(s) designated pursuant to subparagraph (E) of this paragraph that can be coordinated with the official commission boundary maps;

(G) describe the products or services known to the ILEC that are currently available in the exchange(s) designated pursuant to subparagraph (E) of this paragraph, and that are the same, equivalent, or substitutable for the service identified pursuant to subparagraph (C) of this paragraph, and identify the providers of those products or services;

(H) with respect to the products or services described pursuant to subparagraph (G) of this paragraph, discuss:

(i) the number and size of telecommunications utilities or other persons providing such products or services;

(ii) the extent to which such products or services are available;

(iii) the ability of customers to obtain such products or services at rates, terms, and conditions comparable to those that the ILEC will offer;

(iv) the ability of telecommunications utilities or other persons to make such products or services readily available at rates, terms, and conditions comparable to those that the ILEC will offer; and

(v) the existence of any significant barrier to the entry or exit of a provider of such products or services;

(I) demonstrate that the level of competition with respect to all components of the ILEC's service identified pursuant to subparagraph (C) of this paragraph represents a significant competitive challenge within the exchange(s) designated pursuant to subparagraph (E) of

this paragraph that warrants the pricing flexibility specified pursuant to subparagraph (B) of this paragraph;

(J) demonstrate that the service identified pursuant to subparagraph (C) of this paragraph is not basic local telecommunications service, including local measured service;

(K) if the type of pricing flexibility requested pursuant to subparagraph (B) of this paragraph is customer-specific pricing or detariffing, demonstrate that the service identified pursuant to subparagraph (C) of this paragraph is not message telecommunications service, switched access service, or wide area telecommunications service;

(L) to prevent the subsidization of the service identified pursuant to subparagraph (C) of this paragraph with revenues from regulated monopoly services, propose mechanisms to recover costs that may not be identified and recovered in a long run incremental cost study, including but not limited to costs associated with advertising, unsuccessful bids, and all items of plant used in the provision of the service;

(M) identify and address the impact that approval of the application for pricing flexibility may have on universal service;

(N) for any type of pricing flexibility other than detariffing, include proposed tariffs and identify any tariff language that restricts the resale, sharing, or joint use of the service identified pursuant to subparagraph (C) of this paragraph and any component thereof and demonstrate why such restrictive tariff language is consistent with the policy established in the Public Utility Regulatory Act §52.001; and

(O) include any other information that the ILEC wants considered in connection with the review of its application.

(4) The commission shall allow an incumbent LEC that is not a Tier 1 LEC as of September 1, 1995, at that company's option, to adopt the cost studies approved by the commission for a Tier 1 LEC.

(5) An application for pricing flexibility shall be docketed and assigned to a presiding officer. No later than ten working days after the filing of an application for pricing flexibility, the presiding officer shall issue an order scheduling a prehearing conference for the purposes of determining notice requirements, establishing a procedural schedule, and addressing other matters as may be appropriate. The commission shall make a final decision no later than 180 days after the completion of notice, as ordered by the presiding officer. However, this 180-day period shall be extended two days for each one day of actual hearing on the merits of the case that exceeds 15 days. The presiding officer or commission, upon a showing of good cause relating to the applicant's failure or refusal to prosecute, including but not limited to the applicant's unreasonable resistance to discovery, may further extend the timeline, provided that the order shall specifically identify the facts found to constitute good cause. This deadline may be expressly waived by the applicant.

(6) For ILECs with less than 31,000 access lines, the commission shall not be limited under paragraph (7)(D)(i)-(x) of this subsection to considering only competition within the exchange(s) where the ILEC will provide the service. Pursuant to paragraph (3)(O) of this subsection, an ILEC with less than 31,000 access lines may provide information that addresses the criteria of paragraph (3)(G)-(I) of this subsection with respect to products or services available outside the exchange(s) designated in paragraph (3)(E) of this subsection.

(7) An application for pricing flexibility shall be approved if, after an evidentiary hearing, the commission finds, based on the evidence, that:

(A) no service for which pricing flexibility is sought is basic local telecommunications service, including local measured service;

(B) no service for which the ILEC requests detariffing of rates is message telecommunications service, switched access service, or wide area telecommunications service

(C) no service for which pricing flexibility is sought includes a component that is not subject to significant competitive challenge;

(D) the grant of pricing flexibility for the service identified pursuant to paragraph (3)(C) of this subsection within the exchange(s) designated pursuant to paragraph (3)(E) of this subsection is appropriate to allow the ILEC to respond to a significant competitive challenge, based upon consideration of the following:

(i) the number and size of telecommunications utilities or other persons providing the same, equivalent, or substitutable service within the exchange(s) designated pursuant to paragraph (3)(E) of this subsection;

(ii) the extent to which the same, equivalent, or substitutable service is available within the exchange(s) designated pursuant to paragraph (3)(E) of this subsection;

(iii) the ability of customers to obtain the same, equivalent, or substitutable services at comparable rates, terms, and conditions within the exchange(s) designated pursuant to paragraph (3)(E) of this subsection;

(iv) the ability of telecommunications utilities or other persons to make the same, equivalent, or substitutable service readily available at comparable rates, terms, and conditions within the exchange(s) designated pursuant to paragraph (3)(E) of this subsection;

(v) the existence of any significant barrier to the entry or exit of a provider of the same, equivalent or substitutable services within the exchange(s) designated pursuant to paragraph (3)(E) of this subsection;

(vi) whether there are mechanisms to minimize potential anti-competitive practices, to the extent that any such practice has been identified in the record;

(vii) whether there are mechanisms to prevent the subsidization of the service with revenues from regulated monopoly services;

(viii) whether the ability of the ILEC to flexibly price the service within the designated exchange(s) would have any significant impact on universal service;

(ix) whether the type of pricing flexibility requested is appropriate in light of the level and nature of competition within the exchange(s) where the ILEC will provide the service; and

(x) any other relevant information contained in the record;

(E) the rates, if the type of pricing flexibility granted is either banded rates or some other type of pricing flexibility pursuant to paragraph (1)(C) of this subsection that involves rate-setting, are just and reasonable and:

(i) yield revenues that are equal to or greater than 105% of the long run incremental cost of the service in the geographic market in which the service will be provided;

(ii) are not unreasonably preferential, prejudicial or discriminatory;

(iii) are such that the service will not be subsidized directly or indirectly by regulated monopoly services; and

(iv) are not predatory or anticompetitive.

(8) Nothing in this subsection is intended to prevent the presiding officer from recommending, or the commission from approving based on the record evidence, relief other than that requested in the application.

(d) **Customer-specific contracts.**

An ILEC shall have the authority to enter into customer-specific contracts for:

(1) central office based PBX-type services for systems of 200 stations or more, as those services compete with customer premises equipment provided by PBX vendors;

(2) billing and collection services;

(3) high-speed private line services of 1.544 megabits or greater;

(4) customized services that are unique because of size or configuration, provided that such customized services shall not include basic local telecommunications service, including local measured service, or message telecommunications services, switched access services, or wide area telecommunications service; and

(5) any other service for which the commission has authorized the ILEC to enter into customer-specific contracts pursuant to this section.

(e) **Subsequent review**. The commission may modify, or revoke, upon notice and hearing, the authorization of any type or types of pricing flexibility granted pursuant to this section.

(f) **Severability**. If any provision of this section or the application thereof to any person or any circumstances is held invalid, such invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application. It is the intent of the commission that the provisions of this section are severable.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter J. COSTS, RATES AND TARIFFS

§26.214. Long Run Incremental Cost (LRIC) Methodology for Services provided by Certain Incumbent Local Exchange Companies (ILECs).

(a) **Application.** This section shall apply to ILECs with annual revenues from regulated telecommunications operations in Texas of less than $100 million for five consecutive years.

(b) **Purpose.** This section shall be used to determine the long run incremental costs incurred by ILECs in the provision of telecommunications services in those instances in which the ILEC chooses to establish LRIC studies.

(c) **LRIC studies.** An ILEC may establish a service's LRIC by submitting a LRIC cost study that conforms to the following general requirements:

(1) A LRIC study must identify the ILEC's investment in all facilities that reflect forward looking least cost technology, as set forth in §26.215(f)(3) of this title (relating to Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility (DCTU) Services), used in the provision of the service.

(2) A LRIC study must apply appropriate loading and fill factors associated with the service.

(3) A LRIC study must apply appropriate annual cost factors, including but not limited to depreciation and cost of money, associated with the service.

(4) A LRIC study must identify non-capital costs associated with the service, including but not limited to maintenance, billing and collection, and marketing costs.

(d) **Procedures for review of LRIC studies filed under subsection (c) of this section.** A LRIC study considered under this section shall be reviewed administratively to determine whether the ILECs LRIC study is consistent with the requirements of this section.

(1) **Notice.** At least ten days before an ILEC files any LRIC study pursuant to this section, the ILEC shall file with the commission and the Office of Public Utility Counsel (OPC) a notice of its intent to file such LRIC study and the expected filing date. The ILEC's notice shall indicate that the filing is being made pursuant to this section. The commission shall then publish notice of the ILEC's intent to file the LRIC study in the *Texas Register*.

(2) **Sufficiency**. The LRIC study shall be examined for sufficiency. To be sufficient, the LRIC study shall conform to the requirements of this section.

(A) Except as required under subparagraph (B) of this paragraph, if the commission staff concludes that material deficiencies exist in the LRIC study, the ILEC shall be notified by the commission staff of the specific deficiency within three working days after the filing date of the LRIC study. The ILEC shall have two working days after the date it is notified of the deficiency to file a corrected LRIC study. On or before five working days after the date of the ILEC response, the presiding officer shall issue an order with regard to the sufficiency.

(B) If the LRIC study filed for approval pursuant to this section is also filed simultaneously as part of an informational notice filing and a contested case arises as a result of the dispute regarding sufficiency of the LRIC study filed as part of the informational notice filing, the review of the LRIC study pursuant to this section shall be abated pending the resolution of the contested case.

(3) **Time schedule.**

(A) No later than 45 days after the filing date of the sufficient LRIC study, any party that demonstrates a justiciable interest may file with the presiding officer written comments or recommendations concerning the LRIC study.

(B) No later than 55 days after the filing date of the sufficient LRIC study, OPC may file with the presiding officer written comments or recommendations concerning the LRIC study.

(C) No later than 65 days after the filing date of the sufficient LRIC study, the commission staff shall file with the presiding officer written comments or recommendations concerning the LRIC study.

(D) No later than 75 days after the filing date of the sufficient LRIC study, any party that demonstrates justiciable interest, OPC, or the ILEC may file with the presiding officer a written response to the commission staff's recommendation.

(E) No later than 85 days after the filing date of the sufficient LRIC study, the presiding officer shall issue a notice stating whether the ILEC's LRIC study is consistent with the requirements of this section. In this notice, the presiding officer shall approve the LRIC study or order the ILEC to refile the LRIC study incorporating all modifications recommended by the presiding officer.

(F) Any party may appeal to the commission an administrative notice by a presiding officer within seven days after the date the notice is issued. The commission shall rule on any appeal added to an open meeting agenda, within 30 days after the date the appeal is filed. If the commission or a presiding officer orders a cost study to be changed, the ILEC shall be ordered to make those changes within a period that is commensurate with the complexity of the LRIC study.

(G) Requests for information. While the LRIC study is being administratively reviewed, the commission staff, OPC, and any party that demonstrates a justiciable interest may submit requests for information to the ILEC. Copies of all answers to such requests for information shall be provided within ten days after receipt of the request by the ILEC to the commission staff, OPC, and any party that demonstrates a justiciable interest.

(H) Suspension. At any point within the first 45 days of the review process, the presiding officer, the commission staff, OPC, the ILEC, or any party that demonstrates a justiciable interest may request that the review process be suspended for 30 days. The presiding officer may grant a request for suspension only upon determination that the party has demonstrated a good cause exists for the suspension.

(I) Effective date of the LRIC study. The effective date of the LRIC study shall be the date it is approved by the presiding officer.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter J. COSTS, RATES AND TARIFFS

§26.215. Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility (DCTU) Services.

(a) **Application.** This section shall apply to DCTUs with annual revenues from regulated telecommunications operations in Texas of $100 million or more for five consecutive years. An incumbent local exchange carrier that is not a Tier 1 local exchange company as of September 1, 1995, at that company's option, may adopt the cost studies approved by the commission for a Tier 1 local exchange company.

(b) **Purpose.** This section shall be used to determine the long run incremental costs incurred by DCTUs in the provision of telecommunications services. The costs determined in this section shall not be used to determine a company's revenue requirement during a proceeding pursuant the Public Utility Regulatory Act, Chapter 53, Subchapters C and D or E.

(c) **Definitions.** The following words and terms when used in this section shall have the following meaning unless the context clearly indicates otherwise.

(1) **Ancillary services —** The category of basic network functions (BNFs) (as defined in paragraph (2) of this subsection) that provide for certain activities that either support or otherwise are adjuncts to other BNFs or finished services. This category of BNFs consists of three subcategories of BNFs: Billing and Collection; Measurement; and Operator Services.

(A) Billing and collection — The subcategory of BNFs that provide for the function of compiling the information needed for customer billing, preparing the customer bill statement, disbursing the bill and collecting the customer payments.

(B) Measurement — The subcategory of BNFs that provide the functions of assembling, collating and transmitting end office switch recorded call data (occurrence and duration).

(C) Operator services — The subcategory of BNFs that provide for the provision of a number of live or mechanized assistance functions to aid customers in the following ways: obtaining customer telephone number, street address and ZIP code information (directory assistance); providing new telephone numbers or explanatory information to callers who dial numbers which have been changed or disconnected (intercepts); providing assistance to customers in completing operator handled toll or local calls (collect, credit card, third party, station-to-station or person-to-person); checking busy lines to make sure the line is not out of service (busy line verification); and interrupting busy lines (busy line interruption). These operator services are provided to end user customers as well as local exchange and interexchange carriers.

(2) **Basic network function (BNF) —** A discrete network function, which is useful either as a stand-alone function or in combination with other functions, for which costs can be identified.

(3) **Capital costs —** The recurring costs that result from expenditures for plant facilities that are capitalized. The annual capital costs consist of depreciation, cost of money, and income taxes.

(4) **Categories of BNFs —** All BNFs shall fall into one of four categories of BNFs. The categories are: network access (as defined in paragraph (13) of this subsection); switching and switch functions (as defined in paragraph (16) of this subsection); dedicated and switched transport (as defined in paragraph (10) of this subsection); and ancillary services (as defined in paragraph (1) of this subsection).

(5) **Common costs —** Costs that are not directly attributable to individual cost objects. For the purposes of this section there are three types of common costs: general overhead costs; costs common to BNFs; and costs common to services.

(A) General overhead costs — Costs incurred in operating and managing the company that are not directly attributable to BNFs or services.

(B) Costs common to BNFs — Costs incurred in the provision of BNFs that can not be directly attributed to any one BNF individually but only to a category or subcategory of BNFs collectively.

(C) Costs common to services — Costs incurred in the provision of two or more services that do not vary with changes in the relative proportions of the outputs of those services. Common costs are not directly attributable to any one service individually but only to a group of services collectively. In the event a BNF is used in the provision of two or more services then the volume insensitive cost of the BNF is a cost common to the services that use the BNF. However, if the technological requirements for the provision of one service alter the least cost technology choice for common BNFs or common facilities, then the increase in costs caused by the requirements for more advanced technologies is not a common cost but a cost directly attributable to the service that alters the least cost technology choice.

(6) **Cost causation principle —** The principle that only those costs that are caused by an activity (such as a network function, service, or group of services) in the long run are directly attributable to that activity. Costs are caused by an activity, in the long run, if the costs are brought into existence as a direct result of the activity.

(7) **Cost driver —** A specific condition, under which a BNF is provided, whose change causes significant and systematic changes in the cost of providing a BNF. For example, if the cost of providing a network access channel varies with the density and size of a wire center, then density and size are cost drivers for that BNF.

(8) **Cost of debt —** The rate of interest paid on borrowed money.

(9) **Cost of money** — The weighted annual cost to the DCTU of the debt and equity capital invested in the company.

(10) **Dedicated and switched transport** — The category of BNFs that provide for dedicated or shared transmission transport between two or more DCTU switching offices or wire centers. This BNF category consists of two subcategories of BNFs: Dedicated Transport and Switched Transport.

(A) Dedicated transport — The subcategory of BNFs that provide for full period, bandwidth specific (e.g., DS-0, DS-1, DS-3) interoffice transmission paths between the originating and terminating points of channel connection.

(B) Switched transport — The subcategory of BNFs that provide for shared interoffice transmission paths between originating and terminating points of switching.

(11) **Group of services —** A number of separately tariffed services that share significant common costs (as defined in paragraph (5) of this subsection) that are necessary and unique to the provision of those services and are not directly attributable to any one service individually. This term also refers to a situation in which two or more groups of services are part of a larger group of services because of significant common costs that are necessary and unique to the provision of all the services in the group but are not directly attributable to any one group or service individually.

(12) **Measure of unit cost —** The measure of usage used to calculate unit cost for a particular BNF (for example, a minute of use of a switching function, or a quarter mile of a DS-1 network access channel). The measure of unit costs may be multidimensional; for example, it may have both time and distance components. The measure of unit cost chosen for a BNF shall correspond to the basis upon which the costs of that BNF are incurred.

(13) **Network access** — The category of BNFs that accommodate access to other network functions provided by DCTUs. Access is accomplished by transmission paths between customers and DCTU wire centers. This category consists of three subcategories of BNFs: network access channel; network access channel connection; and channel performance and other features and functions.

(A) Network access (NA) channel — The subcategory of BNFs that provide the transmission path between the point of interface at the customer location and the main distribution frame, or equivalent (e.g., DSX-1, DSX-3), of a DCTU wire center.

(B) Network access (NA) channel connection — The subcategory of BNFs that provide the interface between the network access channel and the DCTU wire center switching equipment, subsequent dedicated transport equipment (dedicated interoffice circuits), or subsequent channel equipment (dedicated intraoffice circuits).

(C) Channel performance and other features and functions — The subcategory of BNFs that provide the channel functions associated with transmission or service type (e.g., analog, digital, coin, ISDN), bandwidth conversion, signaling, multiplexing, amplification, and channel performance.

(14) **Significant —** For the purposes of this section, the qualifying term significant is used to refer to instances in which costs or changes affect total study results by at least five percent. This general guideline for when costs or changes are significant may be relaxed by considering the cumulative effect of either including or excluding costs or changes from a study.

(15) **Subcategories of BNFs —** Groupings of closely related BNFs in a category of BNFs.

(16) **Switching and switch functions** — The category of BNFs that provide for switched access between two or more network access channels or between network access channels and other BNFs, such as interoffice transport. This function is accomplished through the establishment of a temporary transmission path between network access channels in the same switching office; between a network access channel and the interoffice facilities that interconnect switching offices; or between a network access channel and other BNFs. This BNF category shall cover the first point of switching for a customer. This BNF category consists of three subcategories of BNFs: interoffice switching; intraoffice switching; and switching features.

(A) Interoffice switching — The subcategory of BNFs that provide for: switching between network access channels and switched transport facilities which are connected to different wire centers; and switching between network access channels and switched transport facilities when a tandem switch is used as the first point of interface to the DCTU switched network (e.g., connection of facilities from an interexchange carrier's point of network interface).

(B) Intraoffice switching — The subcategory of BNFs that provide for switching between two or more network access channels within the same wire center.

(d) **General principles.**

(1) Underlying the construction and application of this section is the recognition that the DCTU network consists of a finite number of BNFs that, when bundled in various combinations, can be used to deliver and market a vast variety of telecommunications services. Therefore, the determination of the cost of a service and the costs of a group of services under this section shall involve the identification and costing of BNFs.

(2) The LRIC studies that the DCTU is required to file under this section shall assume that the company is operating in the long run and employs least cost technologies, as those terms are defined in subsection (c) of this section.

(3) In order to obtain accurate LRIC study results, the DCTU shall avoid the use of embedded cost data; expense items and capital costs shall reflect long run incremental costs and the DCTU shall justify any instance in which embedded cost data are used. Further, the fact that the costs determined under this section may differ from the company's embedded costs as determined during proceedings under the Public Utility Regulatory Act, Chapter 53, Subchapters C and D or E, should in no way cause the company to attribute any of this cost discrepancy to LRIC studies for BNFs, services, or groups of services.

(4) When a BNF is used in the provision of two or more services then the volume insensitive cost of the BNF is a cost common to the services (as defined in subsection (c)(5)(C) of this section) that use the BNF.

(5) When services share significant common costs (as defined in subsection (c)(5)(C) of this section), none of the common costs shall be included in the LRIC studies for the services individually; instead,

the company shall identify which services share the common costs and attribute the cost recovery responsibility of these costs to the group of services collectively. Specifically, the individual LRIC studies for residential and business basic local exchange service, as these services are tariffed on the effective date of this section, shall exclude any volume insensitive costs associated with the use of the network access channel basic level (as defined in subsection (e)(1)(A) of this section) and network access channel connection basic level (as defined in subsection (e)(2)(A) of this section).

(6) When two or more groups of services share common costs, none of the common costs shall be included in the LRIC studies for groups individually; instead, the company shall identify which groups share the common costs and assign the common cost recovery responsibility of these costs to these groups collectively.

(7) Nothing in this section is intended to either endorse or reject the DCTU's current rate and tariff structures.

(e) **Identification of basic network functions.** The DCTU shall identify for each subcategory of BNFs the relevant and separately identifiable BNFs. The determination of the appropriate degree of aggregation of network components, functions, or activities into separately identifiable BNFs shall be consistent with the principles described in subsection (d) of this section. Furthermore, in choosing BNFs, the DCTU shall seek to minimize the number of network components, functions, or activities that are not included in BNFs. In addition to BNFs the company identifies under this subsection, the company shall identify for each subcategory of BNFs the following prescribed BNFs:

(1) **Required BNFs for subcategory network access (NA) channel:**

(A) NA channel basic level: A transmission path which provides less than 1.544 MBPS digital capability. This includes 300 to 3,000 Hz analog voice service.

(B) NA channel DS-1 level**:** A transmission path which has 1.544 MBPS digital capability.

(C) NA channel DS-3 level: A transmission path which has 45 MBPS digital capability.

(2) **Required BNFs for subcategory NA Channel Connection:**

(A) NA channel connection basic level: An interface for channels which provide less than 1.544 MBPS digital capability. This includes the interface for 300 - 3,000 Hz analog voice service which is the basic interface for most voice grade services such as: basic local residential and local business service, PBX trunks, centrex-type access lines and voice grade dedicated transport service. In addition, this category includes the interface for four frequency bandwidths provided for audio channels such as: 200 to 3,500 Hz, 100 to 5,000 Hz, 50 to 8,000 Hz and 50 to 15,000 Hz. Also included in this BNF are the interfaces for low speed data transmission at speeds of 2.4, 4.8, 9.6, 56 KBPS and all other speeds below the T-1 rate of 1.544 MBPS. This interface is for narrowband service.

(B) NA channel connection DS-1 level: An interface for 1.544 MBPS digital transmission channels. This interface connects high capacity wideband transmission channels which operate in a full duplex, time division (digital) multiplexing mode.

(C) NA channel connection DS-3 level: An interface for 45 MBPS digital transmission channels. This interface connects broadband transmission channels which operate in full duplex, time division (digital) multiplexing mode.

(3) **Required BNFs for subcategory Channel Performance and Other Features and Functions:**

(A) Standard signaling and transmission level capabilities. Signaling and transmission level capabilities suitable for a wide variety of network services and applications associated with the BNF NA channel basic level, as defined in paragraph (1)(A) of this subsection.

(B) Nonstandard signaling and transmission level capabilities and other features. Signaling and transmission level capabilities and other features and functions, other than those defined in subparagraph (A) of this paragraph, such as high voltage protection, multiplexing, and bridging. The company is encouraged to disaggregate this BNF into smaller BNFs that capture the variety of features and functions available to customers.

(4) **Required BNFs for subcategory interoffice switching: interoffice switching.** The type of switching that provides for: switching between network access channels and switched transport facilities which are connected to different wire centers; and switching between network access channels and switched transport facilities when a tandem switch is used as the first point of interface to the switched network (e.g., connection of facilities from an interexchange carrier's point of network interface).

(5) **Required BNFs for subcategory intraoffice switching: intraoffice switching.** Switching between two or more network access channels served from the same wire center.

(6) **Required BNFs for subcategory switching features:**

(A) Hunting arrangements. An optional function available to customers with multiple local exchange access lines in service.

(B) Custom calling features. Various optional features which provide added calling convenience.

(C) Central office automatic call distribution. The provision of call distribution as an integrated function of certain electronic central offices equipped to provide this capability. This function permits an equal distribution of a large volume of incoming calls to predesignated groups of answering positions, referred to as agent positions.

(D) Central office based PBX-type functions. A business communications system furnished from stored program control central offices that provides the equivalent of customer premises PBX services through the use of central office hardware and software as well as through network access facilities from the central office to the customer premises. Included in this BNF shall be only hardware specific to this type of service, processor or memory usage involved in special features for this type of service, and any software or software right to use fees associated with this type of service. This BNF should exclude any network functions that are already identified as other BNFs.

(7) **Required BNFs for subcategory dedicated transport:**

(A) Dedicated transport termination. An interface which provides for the transmission conversions (e.g., multiplexing) required between channel connection and dedicated transport facilities.

(B) Dedicated transport facility. The full period, bandwidth specific (e.g., DS-0, DS-1, and DS-3), interoffice transmission paths established between two points of dedicated transport termination.

(8) **Required BNFs for subcategory switched transport:**

(A) Switched transport termination. An interface which provides for the transmission conversion (e.g., multiplexing) required between the switching function and switched transport facilities.

(B) Switched transport facility. The temporary interoffice transmission paths established between two points of switched transport termination.

(C) Switched transport tandem switching. The intermediate points of switching used as an economic surrogate to direct routing of interoffice facilities in the provision of switched transport.

(9) **Required BNFs for subcategory billing and collection: billing and collection.** The function of compiling the information needed for customer billing, preparing the customer bill statement, disbursing the bill and collecting the customer payments (this includes any collection activities required for late payment or non-payment of billing amount due).

(10) **Required BNFs for subcategory measurement: measurement.** The function of assembling, collating and transmitting end office switch recorded call data (occurrence and duration).

(11) **Required BNFs for subcategory operator services: operator services.** The role of providing a number of live or mechanized assistance functions to aid customers in the following ways: obtaining customer telephone number, street address and ZIP code information (directory assistance); providing new telephone numbers or explanatory information to callers who dial numbers which have been changed or disconnected (intercepts); providing assistance to customers in completing operator handled toll or local calls (collect, credit card, third party, station-to-station or person-to-

person); checking busy lines to make sure the line is not out of service (busy line verification); and interrupting busy lines (busy line interruption). These operator services are provided to end user customers as well as local exchange and interexchange carriers.

(f) **LRIC studies for individual BNFs.** The DCTU shall perform a LRIC study for each of the BNFs identified under subsection (e) of this section. The company shall perform the LRIC studies consistent with the principles described in subsection (d) of this section. Additionally, the company shall use the following instructions in determining the LRIC for individual BNFs.

(1) **Relevant increment of output.** For the purposes of this subsection, the relevant increment of output, as that term is used in the definition of LRIC in §26.5 of this title (relating to Definitions), shall be the level of output necessary to satisfy total current demand levels for all services using the BNF in question. Adjustments to total service output may be made to reflect the presence of new services for which demand levels can demonstrably be anticipated to increase significantly over the course of six months.

(2) **Relating expenses to BNFs.** The company shall avoid the use of embedded cost data and shall determine expenses consistent with the principles of long run incremental costing.

(A) Common expenses. Common expenses that are not directly attributable, using the cost causation principle, to the BNF shall be excluded.

(B) Nonrecurring expenses. The expenses of nonrecurring activities shall be separately identified.

(C) Taxes. Any tax expenses not directly attributable, using the cost causation principle, shall be excluded from the LRIC study for individual BNFs. Specifically, taxes associated with the provision of services that use more than one BNF shall not be included in the BNF LRICs.

(3) **Least cost technology.** LRIC studies shall assume the use of least cost technology. The choice of least cost technologies, however, shall:

(A) be restricted to technologies that are currently available on the market and for which vendor prices can be obtained;

(B) be consistent with the level of output necessary to satisfy current demand levels for all services using the BNF in question; and

(C) be consistent with overall network design and topology requirements.

(4) **Network topology.** LRIC studies shall use the existing or planned network topology.

(5) **Cost of money.** When the company uses the most recent commission approved rate of return for the company, determined either in a rate proceeding as described in §26.201(d)(1) of this title (relating to Cost of Service) or a commission arbitration proceeding, there will be a rebuttable presumption of its reasonableness. The company may use any other forward-looking rate, but shall justify its use. The DCTU is not required to update its filing only to reflect the most recently approved cost of money.

(6) **Rate of depreciation.** When the company uses the most recent commission approved rate of depreciation for the company there will be a presumption of reasonableness. The company shall justify the use of any other rate.

(7) **Measure of unit cost.** LRIC studies shall identify the appropriate measure of unit cost for a BNF (e.g., minutes of use, access line). The measure of unit cost chosen for a BNF shall correspond to the basis upon which the costs of the BNF are incurred. The measure of unit cost may be multidimensional; for example, it may have both time and distance components. In identifying the appropriate measure of unit cost, the company shall ignore the current rate structure for tariffed services using the BNF.

(8) **Determination of unit cost.** Using the measure of unit cost identified under paragraph (7) of this subsection, the company shall calculate unit cost for the BNF based on the assumption of full capacity utilization of the BNF, which should allow for any spare capacity due to lumpy investments or technical requirements, such as spare capacity needed for testing. The unit cost shall be

calculated based on the volume sensitive costs of the BNF and exclude all costs that are volume insensitive (as those terms are defined in §26.5 of this title).

(9) **Determination of volume insensitive costs.** The company shall calculate the volume insensitive costs (as defined in §26.5 of this title) for the BNF.

(10) **Cost drivers.** LRIC studies shall identify and account for all relevant cost drivers. LRIC studies for certain BNFs shall at a minimum account for the cost drivers specified below.

(A) Cost drivers for NA channel basic level, NA channel DS-1 level, and NA channel DS-3 level. The LRICs for these BNFs shall systematically account for variations in costs caused by variations in:

(i) the density of a wire center;

(ii) the size of a wire center; and

(iii) the distance.

(B) Cost drivers for NA connection basic level, NA connection DS-1 level, and NA connection DS-3 level. The LRICs for these BNFs shall systematically account for variations in costs caused by variations in:

(i) the density of a wire center; and

(ii) the size of a wire center.

(C) Cost drivers for intraoffice switching and interoffice switching. The LRICs for these BNFs shall systematically account for variations in costs caused by variations in:

(i) the density of a wire center;

(ii) the size of a wire center; and

(iii) the time of day.

(D) Cost drivers for dedicated transport facilities and termination. The LRICs for these BNFs shall systematically account for variations in costs caused by variations in:

(i) the size of a wire center; and

(ii) the distance.

(E) Cost drivers for switched transport facilities, termination and tandem switching. The LRICs for these BNFs shall systematically account for variations in costs caused by variations in:

(i) the size of a wire center;

(ii) the distance; and

(iii) time of day.

(F) Cost drivers for measurement. The LRIC for this BNF shall systematically account for variations in costs caused by variations in:

(i) the density of a wire center;

(ii) the size of a wire center;

(iii) the time of day; and

(iv) the duration of a call.

(G) Cost drivers for operator services. The LRIC for this BNF shall systematically account for variations in costs caused by variations in the type of operator services calls.

(g) **LRIC studies for tariffed services.** The DCTU shall perform a LRIC study for each tariffed service, except those services for which a waiver has been granted under the workplan approved by the commission. Each LRIC study for a tariffed service shall be calculated as the sum of the costs caused by that service's use of BNFs and any other service specific costs associated with functions not identified as separate BNFs, such as expenses of billing, service specific advertising and marketing, and service specific taxes. Each LRIC study for a tariffed service shall be consistent with the principles described in subsection (d) of this section. Additionally, the company shall use the following instructions in determining the LRIC for individual tariffed services:

(1) **Mapping of BNFs and costs to tariffed services.** The LRIC study shall identify the BNFs that are used in the provision of the tariffed service; the long run incremental costs for the tariffed service

shall include the costs associated with this usage. The costs associated with the service's use of a BNF shall be calculated as the product of the unit cost for the BNF (as determined under subsection (f)(8) of this section) and the demand of the service for that BNF.

(2) **Identification of other costs.** The LRIC study for an individual tariffed service shall include all service specific costs (e.g., expenses of billing, marketing, customer service or service specific taxes) related to the provision of the service that are not included in the costs for the BNFs.

(3) **Exclusion of common costs.** The LRIC study for an individual tariffed service shall exclude any costs that are common costs (as defined in subsection (c)(5) of this section). Specifically, the individual LRIC studies for residential and business basic local exchange service, as these services are tariffed on the effective date of this section, shall exclude any volume insensitive costs associated with the use of the network access channel basic level (as defined in subsection (e)(1)(A) of this section) and network access channel connection basic level (as defined in subsection (e)(2)(A) of this section).

(4) **Relevant increment of output.** For the purposes of this subsection, the relevant increment of output, as that term is used in the definition of LRIC in §26.5 of this title (relating to Definitions), shall be the level of output necessary to satisfy current demand levels for the service. Adjustments to total service output may be made to reflect the presence of new services for which demand levels can demonstrably be anticipated to increase significantly over the course of six months.

(5) **Relating expenses to services.** The company shall avoid the use of embedded cost data and shall determine expenses consistent with the principles of long run incremental costing.

(A) Common expenses. Common expenses that are not directly attributable, using the cost causation principle, to the service shall be excluded.

(B) Nonrecurring expenses. The expenses of nonrecurring activities shall be separately identified.

(C) Taxes. Any tax expenses not directly attributable, using the cost causation principle, shall be excluded from the LRIC study for individual services.

(6) **Least cost technology.** LRIC studies shall assume the use of least cost technology. The choice of least cost technologies, however, shall:

(A) be restricted to technologies that are currently available on the market and for which vendor prices can be obtained;

(B) be consistent with the level of output necessary to satisfy current demand levels for all services using the BNF in question; and

(C) be consistent with overall network design and topology requirements.

(7) **Network topology.** LRIC studies shall use the existing or planned network topology.

(8) **Cost of money.** When the company uses the most recent commission approved rate of return for the company, determined either in a rate proceeding as described in §26.201(d)(1) of this title (relating to Cost of Service) or a commission arbitration proceeding, there will be a rebuttable presumption of its reasonableness. The company may use any other forward-looking rate, but shall justify its use. The DCTU is not required to update its filing only to reflect the most recently approved cost of money.

(9) **Rate of depreciation.** When the company uses the most recent commission approved rate of depreciation for the company there will be a presumption of reasonableness. The company shall justify the use of any other rate.

(h) **Identification of BNFs and groups of services that share significant common costs and calculation of such common costs.** The company shall identify all instances in which BNFs and groups of services share significant common costs and calculate such common costs.

(1) **Costs common to BNFs.** The company shall identify and calculate for each subcategory of BNFs and category of BNFs significant costs that are common to BNFs (as defined in subsection (c)(5)(B) of this section). Costs common to BNFs shall only be identified and calculated at the level of subcategories of BNFs and/or categories of BNFs.

(2) **Costs common to groups of services.** The company shall identify and calculate all significant common costs and the groups of services that share those common costs (as defined in subsection (c)(5)(C) of this section). The calculation of common costs required under paragraphs (1)-(2) of this subsection shall be consistent with the principles described in subsection (d) of this section and the instructions listed below.

(3) **Relevant increment of output.** When common costs are computed for BNFs or services, the relevant increment of output, as that term is used in the definition of LRIC in §26.5 of this title (relating to Definitions), shall be the level of output necessary to satisfy current demand levels for the BNFs or the services. Adjustments to total service output may be made to reflect the presence of new services for which demand levels can demonstrably be anticipated to increase significantly over the course of six months.

(4) **Expenses.** The company shall avoid the use of embedded cost data and shall determine expenses consistent with the principles of long run incremental costing.

(A) Nonrecurring expenses. The expenses of nonrecurring activities shall be separately identified.

(B) Taxes. Any tax expenses not directly attributable, using the cost causation principle, shall be excluded from the cost studies for common costs.

(5) **Least cost technology.** The studies shall assume the use of least cost technology. The choice of least cost technologies, however, shall:

(A) be restricted to technologies that are currently available on the market and for which vendor prices can be obtained;

(B) be consistent with the level of output necessary to satisfy current demand levels for the BNFs or services in question; and

(C) be consistent with overall network design and topology requirements.

(6) **Network topology.** Cost studies shall use the existing or planned network topology.

(7) **Cost of money.** When the company uses the most recent commission approved rate of return for the company, determined either in a rate proceeding as described in §26.201(d)(1) of this title (relating to Cost of Service) or a commission arbitration proceeding, there will be a rebuttable presumption of its reasonableness. The company may use any other forward-looking rate, but shall justify its use. The DCTU is not required to update its filing only to reflect the most recently approved cost of money.

(8) **Rate of depreciation.** When the company uses the most recent commission approved rate of depreciation for the company there will be a presumption of reasonableness. The company shall justify the use of any other rate.

(i) **LRIC studies for groups of tariffed services that share significant common costs.** The DCTU shall perform a LRIC study for each group of services identified under subsection (h)(2) of this section. Each group LRIC shall be calculated as the sum of the LRICs (as determined under subsection (g) of this section) for the services in the group and the common costs for those services (as identified under subsection (h)(2) of this section). Each LRIC study shall be consistent with the principles described in subsection (d) of this section. Additionally, the company shall use the following instructions in determining the LRIC for groups of services.

(1) **Relevant increment of output.** When the LRIC is computed for a group of services, the relevant increment of output, as that term is used in the definition of LRIC in §26.5 of this title (relating to Definitions), shall be the level of output necessary to satisfy current demand levels for the services in the group. Adjustments to total service output may be made to reflect the presence of new services for which demand levels can demonstrably be anticipated to increase significantly over the course of six months.

(2) **Relating expenses to groups of services.** The company shall avoid the use of embedded cost data and shall determine expenses consistent with the principles of long run incremental costing.

(A) Common expenses. Common expenses that are not directly attributable, using the cost causation principle, to the group of services shall be excluded.
(B) Nonrecurring expenses. The expenses of nonrecurring activities shall be separately identified.
(C) Taxes. Any tax expenses not directly attributable, using the cost causation principle, shall be excluded from the LRIC study for the group of services.

(3) **Least cost technology.** LRIC studies shall assume the use of least cost technology. The choice of least cost technologies, however, shall:
(A) be restricted to technologies that are currently available on the market and for which vendor prices can be obtained;
(B) be consistent with the level of output necessary to satisfy current demand levels for all services using the BNF in question; and
(C) be consistent with overall network design and topology requirements.

(4) **Network topology.** LRIC studies shall use the existing or planned network topology.

(5) **Cost of money.** When the company uses the most recent commission approved rate of return for the company, determined either in a rate proceeding as described in §26.201(d)(1) of this title (relating to Cost of Service) or a commission arbitration proceeding, there will be a rebuttable presumption of its reasonableness. The company may use any other forward-looking rate, but shall justify its use. The DCTU is not required to update its filing only to reflect the most recently approved cost of money.

(6) **Rate of depreciation.** When the company uses the most recent commission approved rate of depreciation for the company there will be a presumption of reasonableness. The company shall justify the use of any other rate.

(j) **Requirements for subsequent filings of LRIC studies.** The LRIC studies required by this subsection shall be consistent with the principles, instructions and requirements set forth in this section and the workplan approved by the commission and shall be reviewed in accordance with the procedures established in subsection (k) of this section.

(1) **Updated studies.** A DCTU may be required to update the filings required by this section, other than the workplan, for those studies where significant changes have occurred.

(2) **Provisions for new BNFs.** When significant technological or other changes occur that necessitate a change in the definition of current BNFs or the identification of new BNFs, the DCTU shall file with the commission and the Office of Public Utility Counsel (OPUC) updated versions for all affected LRIC studies or new studies as appropriate.

(3) **Provisions for new services.** For each application for a service filed pursuant to this title, the DCTU shall file with the commission and OPUC a LRIC study for the service consistent with the principles described in subsection (d) of this section and the specific requirements set forth in subsection (g) of this section.

(4) **Unbundling of existing tariffed services.** When an application filed pursuant to this title proposes a service that previously had been bundled with other BNFs into a tariffed service, the DCTU shall carefully reexamine the identification of groups of services that share significant common costs (as required under subsection (h) of this section). If the new service significantly changes the identification of groups of services and the identification of common costs, the DCTU should update all studies required under this section that are affected by these changes.

(k) **Review process for LRIC studies.** A LRIC study considered under this section shall be reviewed administratively to determine whether the DCTU's LRIC study is consistent with the principles, instructions and requirements set forth in this section.

(1) **Sufficiency.** The LRIC study shall be examined for sufficiency. To be sufficient, the LRIC study shall conform to the prototype studies developed under the workplan approved by the commission. If the presiding officer or the commission staff concludes that material deficiencies exist in the LRIC

study, the DCTU shall be notified within 15 days of the filing date of the specific deficiency in its LRIC study. The DCTU shall have 15 days from the date it is notified of the deficiency to file a corrected LRIC study.

(2) **Time schedule.**

(A) No later than 45 days after the filing date of the sufficient LRIC study, any party that demonstrates a justiciable interest may file with the presiding officer written comments or recommendations concerning the LRIC study.

(B) No later than 55 days after the filing date of the sufficient LRIC study, OPUC may file with the presiding officer written comments or recommendations concerning the LRIC study.

(C) No later than 65 days after the filing date of the sufficient LRIC study, the commission staff shall file with the presiding officer written comments or recommendations concerning the LRIC study.

(D) No later than 75 days after the filing date of the sufficient LRIC study, any party that demonstrates a justiciable interest, OPUC, or the DCTU may file with the presiding officer a written response to the commission staff's recommendation.

(E) No later than 85 days after the filing date of the sufficient LRIC study, the presiding officer shall complete an administrative review to determine whether the DCTU's LRIC study is consistent with the principles, instructions and requirements set forth in this section. The presiding officer shall approve the LRIC study or order the DCTU to refile the LRIC study incorporating all modifications recommended by the presiding officer.

(F) Any party may appeal to the commission an administrative determination by a presiding officer within five days after the date of notification of the determination. The commission shall rule on the appeal within 30 days after the date it receives the appeal. If the commission or a presiding officer orders a cost study to be changed, the dominant certificated telecommunications utility shall be ordered to make those changes within a period that is commensurate with the complexity of the LRIC study.

(3) **Requests for information.** While the LRIC study is being administratively reviewed, the commission staff, OPUC, and any party that demonstrates a justiciable interest may submit requests for information to the DCTU. Three copies of all answers to such requests for information shall be provided within ten days after receipt of the request by the DCTU to the commission staff, OPUC and any party that demonstrates a justiciable interest.

(4) **Suspension.** At any point within the first 45 days of the review process, the presiding officer, the commission staff, OPUC, the DCTU, or any party that demonstrates a justiciable interest may request that the review process be suspended for 30 days. The presiding officer may grant a request for suspension only if he or she has determined that the party has demonstrated that good cause exists for such suspension.

(5) **Effective date of the LRIC study.** The effective date of the LRIC study shall be the date it is approved by the presiding officer.

(l) **Notice requirements.** At least ten days before a DCTU files any workplan or LRIC study pursuant to this section, the DCTU shall file with the commission and OPUC a notice of its intent to file such workplan or LRIC study and the expected filing date. The DCTU's notice shall indicate that the filing is being made pursuant to this section. The commission shall then publish notice of the DCTU's intent to file the workplan or LRIC study in the Texas Register.

§26.216. Educational Percentage Discount Rates (E-Rates).

(a) **Purpose.** The purpose of this section is to establish educational percentage discount rates (E-Rates) for intrastate telecommunications services, Internet access, and internal connections that are equivalent to those adopted for interstate services by the Federal Communications Commission (FCC) in 47 Code of Federal Regulations part 54, subpart F (Universal Service Support for Schools and Libraries).

(b) **Provisions governing intrastate E-Rates.**

(1) **Intrastate services eligible for E-Rates.** The percentage discount rates available pursuant to 47 Code of Federal Regulations part 54, subpart F to eligible schools, libraries, and consortia as defined by 47 Code of Federal Regulations part 54, subpart F shall apply to the following intrastate services:

(A) all commercially available telecommunications services provided by telecommunications carriers;

(B) Internet access; and

(C) installation and maintenance of internal connections.

(2) **Eligibility for intrastate E-Rates.** Schools, libraries, and consortia eligible for E-Rates pursuant to 47 Code of Federal Regulations part 54, subpart F shall comply with the provisions of 47 Code of Federal Regulations part 54, subpart F in order to receive the intrastate E-Rates.

§26.217. Administration of Extended Area Service (EAS) Requests.

(a) **Purpose.** This section establishes procedures for processing requests for extended area service (EAS) pursuant to the Public Utility Regulatory Act (PURA), Chapter 55, Subchapter B. On or after September 1, 2011, the commission may not require a telecommunications provider to provide mandatory or optional extended area service to additional metropolitan areas or calling areas.

(b) **Extended Area Service.** The term "utility(ies)" in this section refers to dominant certificated telecommunications utility(ies).

(1) **Filing requirements.**

(A) In order to be considered by the commission, a request for EAS shall be initiated by at least one of the following actions:

(i) a petition signed by the greater of 5.0% or 100 of the subscribers in the exchange from which the petition originates;

(ii) a resolution adopted and filed with the commission by the governing body of a political subdivision provided that said governing body properly represents the exchange requesting EAS;

(iii) a resolution adopted and filed with the commission by the board of directors or trustees of a community association representing an unincorporated community; or

(iv) an application filed by one or more of the affected utility(ies).

(B) A request for establishment of a particular EAS arrangement pursuant to subparagraph (A)(i), (ii), or (iii) of this paragraph shall not be considered sooner than three years after either a determination of the failure of a previous request to meet eligibility requirements, or final commission action on a previously docketed request. An exception to this requirement may be granted to any petitioning exchange which demonstrates that a change of circumstances may have materially affected traffic levels between the petitioning exchange and the exchange to which EAS is desired.

(C) A request for EAS shall state the name of the exchange(s) to which EAS is sought.

(D) The petition shall set forth the name and telephone number of each signatory and the name of the exchange from which the subscribers receive service.

(E) Each signature page of a petition for EAS must contain information which clearly states that establishment of the requested EAS route may require that subscribers to the service change their telephone numbers and pay a monthly EAS rate in addition to their local exchange service rates, as well as applicable service connection charges.

(F) Requests for EAS into metropolitan exchanges will be grouped by relevant metropolitan exchange. For each metropolitan exchange, the commission staff will file a motion to docket a proceeding for the determination of uniform EAS rate additives as directed by paragraphs (3), (4), and (5) of this subsection for all pending EAS requests to that metropolitan exchange. Upon the docketing of such a proceeding, two weeks notice in a newspaper of general circulation in the metropolitan area shall be published. The notice shall contain such information as deemed reasonable by the presiding officer in the proceeding. No earlier than 60 days from the date of final publication of notice, the demand studies required by paragraph (3) of this subsection shall be initiated. New petitions for EAS into the metropolitan exchange may be accepted prior to the initiation of the demand studies.

(2) **Community of interest**.

(A) Upon receipt of a proper filing under the provisions set out in paragraph (1) of this subsection, the utility(ies) involved will be directed by the commission staff to initiate appropriate calling usage studies. Within 90 days of receipt of such direction, the utility(ies) shall provide the results of such studies to the commission staff and to a representative of the petitioning exchange(s). The message distribution and revenue distribution detail from the studies shall be considered proprietary unless the parties agree otherwise and shall not be released for use outside the context of the commission's proceedings. The data to be provided shall be based upon a minimum 60 day study of representative calling patterns, shall be in such form, detail, and content as the commission staff may reasonably require and shall include at least the following information:

(i) for business customers and residential customers and for the combined total, the number of messages and either minutes-of-use or billed toll revenues per customer account per month, in each direction over the route being studied;

(ii) a detailed analysis of the distribution of calling usage among subscribers, in each direction over the route being studied, showing the number of subscriber accounts placing zero calls, one call, etc., through ten calls, the number of subscriber accounts placing between 11 and 20 calls, the number placing between 21 and 50 calls, and the number of subscriber accounts placing more than 50 calls, per month;

(iii) data showing, by class of service, the number of subscriber accounts in service for each of the exchanges being studied;

(iv) the distance between rate centers, and the average revenue per message for the calls during the study period;

(v) the number of foreign exchange (FX) lines in service over each route and the estimated average calling volumes on these lines expressed as messages per month;

(vi) a listing of known interexchange carriers providing service between the petitioning exchange and the exchange(s) to which EAS is desired.

(B) A community of interest between exchanges shall be considered to exist from one exchange to the other when:

(i) there is an average (arithmetic mean) of no less than ten calls per subscriber account per month from one exchange to the other, and

(ii) no less than two thirds of the subscribers' accounts place at least five calls per month from one exchange to the other.

(C) A request for EAS shall be assigned a project number and notice shall be provided, pursuant to paragraph (7) of this subsection, when a community of interest is found to exist as described in subparagraph (B) of this paragraph:

(i) on a bilateral basis between exchanges, or

(ii) on a unilateral basis from the petitioning exchange to the other exchange.

(D) The project shall be established as a formal docket upon the motion of the commission staff.

(E) Following the docketing of a request, a prehearing conference shall be scheduled to establish the exchange(s) to which EAS is sought, and to report any agreements reached by the parties. The utility(ies) involved shall conduct appropriate demand and costing analyses according to paragraphs (3) and (4) of this subsection.

(3) **Demand analysis.**

(A) The utility(ies) involved shall conduct analyses of anticipated demand for the requested EAS. The data shall be in such form, detail, and content as the commission staff may reasonably require and shall include, at a minimum, the following information:

(i) the number of subscribers who are expected to take the requested service at the estimated rates recommended pursuant to paragraph (5) of this subsection and the associated probability of that level of subscribership;

(ii) how call traffic within the requested extended area is expected to change given the rates and subscribership under clause (i) of this subparagraph; and

(iii) the total volume of traffic upon which to base the anticipated switching and trunking requirements resulting from clauses (i) and (ii) of this subparagraph.

(B) Unless the utility(ies) demonstrates good cause to expand the time schedule, the utility(ies) shall provide to the commission staff and to other parties to the proceeding, no later than 120 days after the prehearing conference, the results of these analyses, together with supporting schedules and detailed documentation needed to understand and verify the study results.

(4) **Determination of costs.**

(A) The utility(ies) involved shall conduct studies necessary to determine the changes in costs and revenues which may reasonably be expected to result from establishment of the requested EAS. These studies shall consider and develop the long run incremental costs as follows:

(i) switching and trunking costs associated with existing toll traffic which converts to EAS traffic plus the costs of switching and trunking required to handle the additional traffic as determined in paragraph (3)(A)(ii) of this subsection;

(ii) the increases and decreases in expenses resulting from the new service and the net effect on operating expenses; and

(iii) direct costs incurred by the utility(ies) in conducting demand analyses in compliance with paragraph (3) of this subsection.

(B) The utility(ies) may analyze the effect on toll revenues in order to present evidence on the overall revenue effects of providing the requested EAS. Revenue effects supported by such evidence, if presented, may be included in the EAS rate additives specified in paragraph (5)(D) of this subsection.

(C) The utility(ies) shall file with the commission's Filing Clerk and serve copies on commission staff and other parties to the proceeding the results of these studies, together with supporting schedules and detailed documentation needed to understand and verify the study results according to the following schedule, unless the utility(ies) can demonstrate that good cause exists to expand the time schedule for a particular study:

(i) incremental costs identified in this paragraph shall be filed no later than 90 days from the filing of the results of the demand analysis conducted pursuant to paragraph (3) of this subsection; and

(ii) toll revenue effects, if analyzed pursuant to subparagraph (B) of this paragraph, shall be filed no later than 90 days from the filing of the results of the incremental costs, pursuant to clause (i) of this subparagraph.

(5) **EAS rate additives.**

(A) Coincident with the filing of cost study results, or coincident with the toll revenue effect results, if filed, the utility(ies) shall file recommendations for proposed incremental rate additives, by class of service, necessary to support the cost of the added service, as well as to support the toll revenue effect, if such effect is filed.

(i) EAS rate additives to be assessed on EAS subscribers in the petitioning exchange(s) are to recover the incremental cost of providing the service

according to paragraph (4)(A) of this subsection plus 10% of the incremental cost.

(ii) The rate additives to be assessed on subscribers in the metropolitan exchange for which EAS has been requested are to recover revenues determined by the following formula: net lost toll multiplied by percent outbound toll and multiplied by the estimated EAS take rate. The terms in the formula are defined as follows:

(I) net lost toll - lost toll revenue calculated according to paragraph (4)(B) of this subsection less the revenue recovered through the EAS rate additive identified in clause (i) of this subparagraph;

(II) percent outbound toll - this factor is calculated by dividing toll minutes of use originating in the metropolitan exchange and terminating in the petitioning exchanges by the total number of toll minutes of use between the metropolitan exchange and the petitioning exchange(s); and

(III) estimated EAS take rate - the estimated number of EAS subscribers in the petitioning exchanges divided by the total number of subscribers in the petitioning exchange(s).

(B) Service connection charges will be applicable.

(C) A non-recurring charge to defray the direct incremental costs of the demand analyses identified in paragraph (4)(A)(iii) of this subsection shall be charged to subscribers who order the service within 12 months from the time it is first offered. The non-recurring charge shall not exceed $5.00 per access line.

(D) The EAS rate additive to be used in the affected exchange(s) must meet the following standards.

(i) No increase in rates shall be incurred by the subscribers of non-benefiting exchanges, that is, by subscribers whose calling scopes are not affected by the requested EAS service.

(ii) If the petitioning exchange demonstrated a unilateral but not a bilateral community of interest through the requirements of paragraph (2)(C)(ii) of this subsection, the EAS arrangements shall be priced using those rate increments designed to recover the added costs for each route, plus the toll revenue effect, if reasonably substantiated. The total increment chargeable to subscribers within an exchange shall be the sum of the increments of all new EAS routes established for that exchange.

(iii) If the petitioning exchange demonstrated a bilateral community of interest through the requirements of paragraph (2)(C)(i) of this subsection and requested that the costs be borne on a bilateral basis, the additional cost for the new EAS route shall be divided between the two participating exchanges according to the ratio of calling volumes between the two exchanges.

(iv) In establishing a flat rate EAS increment, all classes of customer access line rates within each exchange shall be increased by equal percentages.

(6) **Subscription threshold.**

(A) A threshold demand level shall be established by the commission's order in the docketed proceeding prior to the design or construction of facilities for the service. A reasonable pre-subscription process shall then be undertaken to determine the likely demand level. If the likely demand level equals or exceeds the threshold demand level, then EAS shall be provided in accordance with the commission's order. If the threshold demand level is not met, the affected utility(ies) is not required to provide the EAS approved by the commission.

(B) The cost of pre-subscription shall be divided between the utility and the petitioners. The petitioners shall pay for the printing of bill inserts and ballots and the utility shall insert them in bills free of charge. In the alternative, upon the agreement of the parties, the utility shall provide, free of charge, and under protective order, the mailing labels of the subscribers in the petitioning exchange, and the petitioners shall pay the cost of printing and mailing the bill inserts and ballots.

(7) **Notice.**

(A) Notice of the filing of an EAS application must be provided to all subscribers within the petitioning exchange(s), by publication for two consecutive weeks in a newspaper of general circulation in the area. Notice must also be given to individual subscribers either through inserts in customer bills, or through a separate mailing to each subscriber. The notice must state: the project number, the nature of the request, and the commission's mailing address and telephone number to contact in the event an individual wishes to protest or intervene. The commission shall also publish notice in the *Texas Register*.

(B) Written notice containing the information described above shall be provided to the governing official(s) of all incorporated areas within the affected exchanges and the county commission(s) or the board of directors or trustees of a community association representing any unincorporated areas within the affected exchanges.

(C) The cost of notice shall be borne by the petitioners.

(8) **Joint filings.**

(A) EAS agreements. The commission may approve agreements for EAS or EAS substitute services filed jointly by the representatives of petitioning exchanges and the affected utility(ies) (joint filings) so long as the agreements are in accordance with subparagraph (C)(i)-(x) of this paragraph. Notwithstanding any other provisions of this paragraph, if more than one political subdivision is affected by a proposed optional calling plan under PURA §55.023, the agreement of each political subdivision is not required.

(B) Multiple exchange common calling plans. Joint filing agreements for EAS or EAS substitute services among three or more exchanges shall be permitted pursuant to subparagraph (C)(i)-(x) of this paragraph.

(C) Standards for joint filings. Joint filings shall be permitted subject to the following:

(i) The parties to joint filings shall include the name of each utility which provides service in the affected exchanges and one duly appointed representative for each affected exchange. Each exchange representative shall be designated jointly by the governing officials of all incorporated areas within the affected exchange and the county commission(s) representing any unincorporated areas within the affected exchange.

(ii) Joint filings are exempt from the traffic requirements contained in paragraph (2) of this subsection.

(iii) Joint filings may include rate proposals which are flat rate, usage sensitive, block rates, or other pricing mechanisms. If usage-sensitive rates are proposed, joint applicants shall include the commission staff in their negotiations.

(iv) Joint filings may propose either one-way or two-way calling.

(v) Joint filings may propose either optional or non-optional calling.

(vi) Joint filings shall specify all non-recurring and recurring rate additives to be paid by the various classes and grades of service in the affected exchanges.

(vii) Joint filings shall demonstrate that the proposed rate additives:

(I) are in the public interest, and in the case of non-optional joint filings which include flat rate additives, the filing shall demonstrate that more than 50% of the total subscribers who will experience a rate change are in favor of this joint filing at the proposed rates; and

(II) recover, for the utility providing the service, the appropriate cost of providing EAS including a contribution to joint costs.

(viii) The notice requirements of paragraph (7) of this subsection are applicable to joint filings. In addition, the commission shall publish notice of the proposed joint filing in the *Texas Register* and shall provide notice to the Office of Public Utility Counsel upon receipt of the joint filing.

(ix) If intervenor status is not granted within 60 days of completion of notice, the joint filing shall be handled administratively, with the commission determining whether the service meets the criteria listed in clause (vii) of this subparagraph. If requested by an intervenor or the commission staff, the joint filing shall be docketed for hearing and final order. Any of the parties to the joint filing may withdraw the joint filing without prejudice at any time prior to the rendition of the final order. Any alteration or modification of the joint filing by the commission may only be made upon the agreement of all parties to the proceeding.

(x) The exchanges to be included within the proposed common calling plan area shall be contained within a continuous boundary and all exchanges within that boundary shall be included in the common calling plan.

§26.219. Administration of Expanded Local Calling Service Requests.

(a) **Purpose**. The purpose of this section is to describe the process used to administer requests from telephone service subscribers for two-way toll-free expanded local calling service (ELCS) pursuant to the Public Utility Regulatory Act (PURA), Chapter 55, Subchapter C. Only incumbent local exchange companies (ILECs) are subject to the provisions of PURA, Chapter 55, Subchapter C. On or after September 1, 2011, the commission may not require a telecommunications provider to provide mandatory or optional expanded local calling services to additional metropolitan areas or calling areas.

(b) **Definitions**. The following terms, when used in this section, have the following meanings unless the context clearly indicates otherwise.

(1) **Expanded local calling service (ELCS) --** The meaning assigned in §26.221 of this title (relating to Applications to Establish or Increase Expanded Local Calling Service Surcharges).

(2) **Expanded local calling service (ELCS) fee --** The meaning assigned in §26.221 of this title.

(3) **Expanded local calling service (ELCS) surcharge --** The meaning assigned in §26.221 of this title.

(4) **Metropolitan exchange --** The meaning assigned in PURA §55.041, including Austin, Corpus Christi, Dallas/Fort Worth, Houston, San Antonio and Waco.

(c) **ELCS requests, notice and intervention.**

(1) **Filing a request for ELCS.** Telephone subscribers in an exchange that has 10,000 or fewer access lines are eligible to request ELCS from the commission by filing information listed in paragraph (2) of this subsection. The request shall be assigned a project number. A presiding officer shall be assigned to the project and the request shall be reviewed administratively unless the presiding officer, for good cause, determines at any point during the review that the request should be docketed. A request from telephone subscribers in an exchange that has more than 10,000 access lines shall be dismissed by the presiding officer within 20 days of the date the request is filed.

(2) **Contents of a request for ELCS.**

(A) Filing letter. A request for ELCS shall include a letter that designates a contact person to respond to inquiries about the request for ELCS. The name, address, and daytime telephone number of the contact person shall be identified in the letter. The letter shall be sent with all other parts of the request to the commission's Filing Clerk.

(B) Community of interest statement. If the petitioning and petitioned exchanges do not meet the geographic proximity requirement set forth in subsection (d)(3)(C) of this section, the request for ELCS shall contain a statement describing the community of interest between the petitioning and petitioned exchanges, based upon standards in subsection (d)(3)(D) of this section. The statement must describe the existence of a community of interest between the petitioning exchange and each petitioned exchange in sufficient detail to allow for verification of assertions made.

(C) Statement of changed circumstances. If subscribers in the petitioning exchange denied by ballot a petition for ELCS to any one or more of the same petitioned exchange(s) within the previous 18 months, the new request shall contain a statement explaining what circumstances have changed since the time of the prior ballot that materially affect the need for ELCS between the petitioning exchange and each petitioned exchange. A petition is denied by ballot if it fails to receive an affirmative vote of at least 70% of the voting subscribers in the petitioning exchange.

(D) Petition. A request for ELCS shall include a petition. A petition may request ELCS between a single petitioning exchange and one or more petitioned exchanges. A petition shall be signed by at least 100 subscribers or 5.0% of subscribers in the petitioning

exchange, whichever is less. Each signatory shall include his or her name and telephone number on the petition. Each signature page of the petition for ELCS shall include:

(i) the name and telephone number of a petition coordinator, whom signatories may contact for further information about the petition;

(ii) the name, area code and prefix of the exchange from which the petitioners receive telephone service (the petitioning exchange);

(iii) the name, area code and prefix(es) of exchange(s) to which ELCS is sought (the petitioned exchange(s));

(iv) a clear statement that only subscribers in the petitioning exchange may sign the petition;

(v) a clear statement that subscribers in the petitioning exchange will be billed a monthly ELCS fee of up to $3.50 per residential line and $7.00 per business line for the first five petitioned exchanges granted, with an additional $1.50 per line for each exchange in excess of five, whether obtained in one or more petitions, in addition to basic local exchange service rates;

(vi) a clear statement that there must be an affirmative vote of at least 70% of those subscribers responding within the petitioning exchange as to each petitioned exchange before ELCS can be implemented to that petitioned exchange; and

(vii) a clear statement that, in addition to ELCS fees billed to petitioning subscribers, an ELCS surcharge may, if necessary, be billed to that ILEC's Texas customers to recover the costs of implementing ELCS.

(3) **Notice to affected ILECs**. Within five working days of receipt by the commission of a filed request for ELCS, the commission shall send a copy of the request by certified mail to each ILEC serving either a petitioning or a petitioned telephone exchange.

(4) **Notice to affected telephone service subscribers**. An ILEC serving a petitioning exchange shall arrange for publication of notice in the petitioning exchange and shall bear the cost of notice as a regulatory case expense. This notice shall be published once, not later than 15 days before ballots are mailed in accordance with subsection (f) of this section, in each local newspaper in the petitioning exchange. The information contained in subsection (f)(2)(A)-(D) and (F) of this section shall be published. Published notice shall identify the assigned project number, shall include the language in Procedural Rule §22.51(a)(1)(F) of this title (relating to Notice for Public Utility Regulatory Act, Chapter 36, Subchapter C-E, Chapter 51, §51.009; and Chapter 53, Subchapters C-E Proceedings) modified to reflect the appropriate intervention deadline and shall be written in both English and Spanish. Additionally, the presiding officer shall cause notice to be published in the *Texas Register* no later than 15 days before ballots are mailed.

(5) **Intervention**. The intervention deadline shall be no sooner than ten days after the last date notice is published in the petitioning exchange. On or before the intervention deadline stated in the published notice, any interested person may file a request to intervene in the project. The presiding officer shall rule on a request to intervene in accordance with Procedural Rule §22.103 of this title (relating to Standing to Intervene) within ten days from the date the request to intervene is filed with the commission's Filing Clerk. Intervention by an interested person does not by itself require that the project be docketed.

(d) **Initial review of a request for ELCS.**

(1) **Sufficiency.** The presiding officer shall, by order issued within 15 days of the filing of a request for ELCS, determine if the request is sufficient as to the requirements in subsection (c)(2) of this section. If the presiding officer finds that the request is deficient, the presiding officer shall notify the designated contact person so that the contact person may cure any such deficiencies. Deficiencies in the request for ELCS may be cured within 30 days of its initial filing. If not cured by the subsequent filing of sufficient information within that time, the presiding officer shall

dismiss the request in whole, if appropriate, or in relevant part, without prejudice to the filing of another request involving the same petitioning and petitioned exchanges.

(2) **Changed Circumstances.** The presiding officer shall, by order issued no later than 15 days after the filing of the request for ELCS, determine whether a statement of changed circumstances required by subsection (c)(2)(C) of this section justifies allowing another ballot sooner than 18 months after the denial by ballot of a prior petition involving the same petitioning and petitioned exchanges. If the presiding officer finds that the statement does not justify allowing another ballot, the presiding officer shall dismiss the request in whole, if appropriate, or in relevant part.

(3) **Geographic proximity or community of interest.**

(A) Distance limitation. ELCS is not available where the most distant central switching offices in a petitioning and petitioned exchange are more than 50 miles apart as measured by using vertical and horizontal (V&H) geographic coordinates.

(B) Determination. The presiding officer shall, by order issued no later than 15 days after the request for ELCS is filed, determine whether the request satisfies either the geographic proximity requirement set forth in subparagraph (C) of this paragraph or the community of interest requirement set forth in subparagraph (D) of this paragraph. If the presiding officer determines that neither the geographic proximity nor the community of interest requirements are satisfied, the presiding officer shall dismiss the request in whole, if appropriate, or in relevant part.

(C) Geographic proximity. The geographic proximity requirement is satisfied as to each petitioned exchange if the nearest central switching office in the petitioning exchange is located within 22 miles of the nearest central switching office in the petitioned exchange as measured using vertical and horizontal (V&H) geographic coordinates.

(D) Community of interest. A community of interest statement shall address situations where the nearest central switching offices in a petitioning and petitioned exchange are more than 22 miles apart and the most distant central offices in a petitioning and petitioned exchange are 50 or less miles apart. A community of interest between a petitioning exchange and a petitioned exchange exists, for purposes of this section, when the community of interest statement includes information demonstrating that the petitioning and petitioned exchanges have a relationship because of schools, hospitals, local governments, or business centers, or that the petitioning or petitioned exchanges have other relationships that make the unavailability of ELCS a hardship on residents of the area.

(e) **Exemptions.**

(1) **ILEC requests for exemption**. An ILEC serving either the petitioning or the petitioned exchange may file a request for exemption from the potential requirement to provide ELCS. Such requests must be filed no later than 20 days after the filing of the request for ELCS. The request for exemption shall be accompanied by an affidavit identifying in detail which conditions described in paragraph (2) of this subsection exist. If the petition includes more than one petitioned exchange, the request for exemption shall clearly identify which conditions apply to which exchanges. The presiding officer shall look to facts or circumstances existing on the date the ELCS request is filed in determining whether a request for exemption may be granted.

(2) **Types of exemptions**. The following conditions shall be considered by the presiding officer in determining whether to exempt an ILEC from being required to provide ELCS:

(A) the ILEC serves fewer than 10,000 access lines statewide; or

(B) the petitioning or petitioned exchange is served by a telephone cooperative; or

(C) extended area service (EAS) or extended metropolitan service is currently available between the petitioning exchange and the petitioned exchange(s); or

(D) the petitioning or petitioned exchange is a metropolitan exchange as defined in subsection (b) of this section; or

(E) it is technologically or geographically infeasible to provide ELCS to the area; or,

(F) the request for ELCS proposes to split a petitioning or petitioned exchange.

(3) **Determination**. If one or more of the conditions described in paragraph (2)(A)-(D) or (2)(F) of this subsection exist, the presiding officer shall, within 40 days after the filing of the request for ELCS, dismiss the request in whole, if appropriate, or in relevant part. If the ILEC requests an exemption based on paragraph (2)(E) of this subsection, the presiding officer shall, by order issued no later than 40 days after the filing of the request for ELCS, determine whether the ILEC's affidavit sufficiently demonstrates that technology is not available in the marketplace to make ELCS feasible. If the exemption request is granted, the presiding officer shall dismiss the request for ELCS in whole, if appropriate, or in relevant part.

(f) **Balloting.** If all applicable requirements contained in subsections (c) and (d) of this section are met and no exemption requests are outstanding, the presiding officer shall issue an order directing the ILEC serving the petitioning exchange to begin balloting subscribers in that exchange, and the presiding officer shall notify the designated contact person for the petitioning exchange that balloting will take place.

(1) **Cost of balloting.** The cost of preparing and distributing ballots shall be borne by the ILEC serving the petitioning exchange as a regulatory case expense.

(2) **Ballot format.** No later than 30 days after the presiding officer's order directing the ILEC serving the petitioning exchange to begin balloting, that ILEC shall distribute a ballot, written in English and Spanish, to each subscriber in the petitioning exchange. The ballot shall require a separate vote from each subscriber for each petitioned exchange. The ballot must be in a standard form approved by the commission and each ballot shall include:

(A) a statement explaining ELCS;

(B) a statement that subscribers in the petitioning exchange have petitioned to expand the toll-free local calling area into the named exchange(s);

(C) a description of the proposed ELCS area, including the name, area code and prefix of the petitioning exchange and each petitioned exchange for which toll-free local calling is sought;

(D) a statement that if at least 70% of those subscribers responding vote "yes" as to any petitioned exchange:

(i) subscribers in the petitioning exchange will be billed, in addition to the company's local exchange service rates, a monthly ELCS fee of up to $3.50 per residential line and up to $7.00 per business line for the first five petitioned exchanges granted, with an additional $1.50 per line for each exchange in excess of five, whether obtained as the result of one or more petitions; and

(ii) in addition to the ELCS fee billed to petitioning subscribers, an ELCS surcharge may, if necessary, be billed to all of the ILEC's Texas subscribers to recover the costs of implementing ELCS; and

(iii) the amount of the monthly ELCS fee and ELCS surcharge will depend on the revenue lost and costs incurred by the company providing the service;

(E) unambiguous instructions for voting, including the following statement in large print: "It is important that you return this ballot. If you are in favor of obtaining Expanded Toll-Free Local Calling to a listed exchange, check the box labeled 'YES' next to that exchange. If you do not want Expanded Toll-Free Local Calling to a listed exchange, check the box labeled 'NO' next to that exchange";

(F) a statement that a petitioned exchange will be included in the expanded toll-free local calling area only if at least 70% of the petitioning subscribers responding vote affirmatively for ELCS to that exchange;

(G) the date by which the returned ballot must be postmarked, which shall be 15 days from the date the ballot is mailed to the customer;

(H) the address to which the ballot should be returned upon completion of voting, identifying the commission as the recipient of returned ballots; and

(I) a unique identification number assigned by the ILEC serving the petitioning exchange to each subscriber in that exchange.

(3) **Master list of subscribers**. No later than 35 days after the presiding officer's order to the ILEC serving the petitioning exchange to begin balloting, that ILEC shall submit to the commission a master list of all subscribers within the petitioning exchange in an electronic spreadsheet format prescribed by the commission. The ILEC shall classify the master list as confidential, and the list shall be treated as such under the provisions of the Government Code, Title 5, Chapter 552. The master list shall be arranged sequentially by billing number and shall include for each subscriber in the petitioning exchange:

(A) the billing name;

(B) the billing number;

(C) the service address;

(D) the mailing address;

(E) the class of service; and

(F) the unique identification number assigned to the subscriber by the ILEC

(4) **Response to balloting**. The commission shall, no later than 15 days after the date stated on the ballot for return of the ballot, notify the presiding officer, the contact person, and affected ILEC(s) of the results of the ballot by filing a ballot report. The ballot report shall specify the results of the ballot for each petitioned exchange.

(A) Affirmative vote.

(i) If at least 70% of petitioning subscribers responding vote affirmatively as to any petitioned exchange, the ILEC serving the petitioning exchange shall file with the commission, within 30 days after the filing of the commission's ballot report, an application to establish ELCS fees pursuant to PURA §55.048(b). The ILEC's application shall include the ILEC's proposed implementation schedule and proposed schedule of fees as well as other information described in §26.221(e)(1)-(9) of this title (relating to Applications to Establish or Increase Expanded Local Calling Service Surcharges).

(ii) The implementation of ELCS shall be scheduled for completion within five months after an order is issued by the presiding officer acknowledging the ballot results. The ILEC shall explain and justify the reasons for any implementation delay beyond five months.

(iii) No later than 15 days after the ILEC's filing of its application to establish ELCS fees, the presiding officer shall issue an order granting interim approval of the ILEC's proposed fees, which may be billed as of the first billing cycle following implementation of ELCS from the petitioning exchange. All fees given interim approval are subject to refund.

(iv) No later than 30 days after the ILEC's filing of its implementation schedule, the presiding officer shall issue an order approving, modifying, or denying the schedule.

(B) Negative vote. If less than 70% of those responding vote in favor of ELCS to a petitioned exchange, the presiding officer shall, within 10 days after the filing of the commission's ballot report, deny the request for ELCS to that specific petitioned exchange.

(g) **Calculation of ELCS Fees.** ELCS fees shall be calculated using the formula described in this subsection unless the presiding officer, for good cause, modifies the formula. Key formula terms are defined in §26.221(b) of this title.

(1) **Regulatory case expenses.** In accordance with PURA §55.048(d), an ILEC may not recover regulatory case expenses under this subsection by surcharging petitioning subscribers.

(2) **ELCS fee formula**. First, sum lost revenues and costs incurred to determine the ILEC's annual ELCS requirement. Divide the annual ELCS requirement by 12 to obtain the monthly requirement, which is the numerator. Second, obtain the most current count of access lines in the petitioning exchange. Multiply the number of business lines by two. Add the doubled business lines to the number of residential lines. This total is the denominator. Third, divide the numerator by the denominator to obtain the monthly ELCS fee per residential line. Multiply the monthly ELCS fee per residential line by two to obtain the monthly ELCS fee per business line. Round ELCS fees up or down to the nearest penny.

(3) **ELCS fee maximums**. The monthly ELCS fee per residential line shall not exceed $3.50 for up to five petitioned exchanges. The monthly ELCS fee per business line shall equal twice the monthly ELCS fee per residential line; however, the monthly ELCS fee per business line shall not exceed $7.00 for up to five petitioned exchanges. For each additional petitioned exchange beyond five, the monthly ELCS fee shall not exceed an additional $1.50 per residential or business line.

(4) **ELCS surcharge**. If ELCS fees do not recover the annual ELCS requirement, an ILEC may request establishment of an ELCS surcharge under §26.221 of this title.

(h) **Docketing.** Within 30 days of the issuance of an order under subsection (f)(4)(A)(iii) of this section granting interim approval of fees to be billed by the ILEC serving the petitioning exchange, any intervenor or the commission may request that the presiding officer docket the project. Docketing may be requested in order to allow further investigation of the ILEC's application or, for good cause shown, any other reason. Upon receipt of a request for docketing, the presiding officer shall docket the project and shall establish a procedural schedule. Upon docketing, discovery may commence in accordance with the commission's Procedural Rules, Chapter 22, Subchapter H of this title (relating to Discovery Procedures).

(i) **Final approval.** If no request for docketing is timely filed under subsection (h) of this section, the presiding officer shall, within 60 days after the order granting interim approval of fees, issue an order granting final approval to or modification of the ELCS fees to be billed by the ILEC serving the petitioning exchange. Upon final approval by the presiding officer of either the proposed or modified tariff sheets, the fees shall be considered permanent unless modified in the future, for good cause, by the commission.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter J. COSTS, RATES AND TARIFFS

§26.221. Applications to Establish or Increase Expanded Local Calling Service Surcharges.

(a) **Purpose**. The purpose of this section is to provide the standard for review of an incumbent local exchange company (ILEC) application, filed pursuant to the Public Utility Regulatory Act (PURA) §55.048(c), to recover all costs incurred and all loss of revenue from an expansion of a toll-free local calling area.

(b) **Definitions**. The following terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.

(1) **Avoided costs** — ILEC costs that are reduced or eliminated due to implementation of ELCS.

(2) **Costs incurred** — The amount of recurring and non-recurring costs incurred by an ILEC to implement ELCS, minus avoided costs.

(3) **Expanded local calling service (ELCS)** — A two-way toll-free local calling service provided by an ILEC to telephone service subscribers pursuant to §26.219 of this title (relating to Administration of Expanded Local Calling Service Requests).

(4) **Expanded local calling service (ELCS) fee** — A fee billed by an ILEC, pursuant to PURA §55.048(b), to subscribers in a petitioning telephone exchange.

(5) **Expanded local calling service (ELCS) requirement** — The sum of lost revenue and costs incurred due to implementation of ELCS.

(6) **Expanded local calling service (ELCS) surcharge** — A fee billed by an ILEC, pursuant to PURA §55.048(c), to all of its Texas subscribers, unless an exception is granted by the commission. ELCS surcharges are designed to recover the residual in paragraph (8) of this subsection.

(7) **Lost revenue** — The loss of revenue an ILEC realizes due to implementation of ELCS.

(8) **Residual** — The sum of lost revenue and costs incurred, minus revenue collected from ELCS fees.

(c) **General Principles**. The commission shall consider these general principles when establishing or increasing ELCS surcharges.

(1) The commission may, at any time, initiate a show cause investigation or a compliance investigation of ELCS surcharges pursuant to Procedural Rule §22.241 of this title (relating to Investigations) to determine whether ELCS surcharges comply with the requirements in PURA §55.048.

(2) An ILEC bears the burden of demonstrating that a proposed ELCS surcharge:

(A) recovers lost revenue and costs incurred,

(B) recovers costs necessary only for implementation of ELCS and

(C) is just and reasonable.

(3) If an ILEC departs from the requirements in subsection (e)(1)-(6) of this section, and proposes instead to use statistical sampling or another method of calculating ELCS surcharges, the ILEC bears the burden of demonstrating the reasonableness of the alternative method as it relates to the surcharge at issue.

(4) An application to establish an ELCS surcharge shall contain information that enables the Office of Regulatory Affairs to validate and replicate the method used by the ILEC to develop a proposed ELCS surcharge.

(5) When established, ELCS surcharges shall be based upon the most current count of local exchange access lines billed by an ILEC.

(6) The commission shall pursue the goal of revenue neutrality in designing ELCS surcharges.

(7) Except as provided under subsection (i)(1) of this section, an ILEC has no continuing right to bill an ELCS surcharge for an indefinite period.

(8) ELCS surcharges shall be designed so that business subscribers are billed twice the monthly per line charge billed to residential subscribers.

(d) **Confidentiality**. Before filing an application regarding an ELCS surcharge, an ILEC shall obtain agreement from the Office of Regulatory Affairs on a method for securing the confidentiality of information the ILEC deems confidential. An application filed pursuant to subsection (e) of this section shall not exclude information deemed confidential by the ILEC.

(e) **Filing an application**. An application to establish or increase an ELCS surcharge shall be assigned a project number and a presiding officer shall be assigned to the project. An ILEC's application shall be reviewed administratively unless the presiding officer dockets the project. An application shall, at a minimum, include:

(1) twelve consecutive months of actual toll revenue data collected as near the ELCS implementation date as possible and, in no event, earlier than 18 months before the ELCS implementation date. Data provided by an ILEC shall show actual toll revenue billed by the ILEC for each direction of each pre-ELCS toll route for each of the 12 consecutive months collected;

(2) twelve consecutive months of actual access revenue data collected as near the ELCS implementation date as possible and, in no event, earlier than 18 months before the ELCS implementation date. Data provided by an ILEC shall show access revenue billed by the ILEC for each direction of each pre-ELCS access route for each of the 12 consecutive months collected;

(3) a calculation of the effect of any mechanism for pooling or settling revenue collected from and disbursed to telecommunications providers;

(4) copies of documents, such as invoices, work orders, receipts and lease agreements, that demonstrate the costs incurred by an ILEC to implement ELCS, with recurring costs and non-recurring costs separately identified for each pre-ELCS toll route;

(5) workpapers supporting all documents contained in the application, including but not limited to, the ILEC's development of factors, ratios, allocations, estimates, projections, averages and labor rates;

(6) a calculation of avoided costs;

(7) one or more tariff sheets reflecting the proposed rates;

(8) a request for exemption, if any, from one or more requirements in this subsection;

(9) a copy of the confidentiality agreement, if such an agreement is necessary, signed by a representative of the Office of Regulatory Affairs;

(10) the text of the proposed notice of an application to establish or increase ELCS surcharges; and

(11) the ILEC's preferred duration of applicability of the proposed ELCS surcharges among alternatives listed in subsection (i) of this section.

(f) **Administrative response to an application.**

(1) **Notice.** The presiding officer shall approve or modify the notice proposed under subsection (e)(10) of this section within 20 days after the filing of an application to establish or increase ELCS surcharges. The ILEC shall arrange for publication of notice at least once each week for four consecutive weeks, in newspapers having general circulation in each of the ILEC's affected telephone exchanges. Published notice shall identify the assigned project number, shall include the language in Procedural Rule §22.51(a)(1)(F) of this title (relating to Notice for Public Utility Regulatory Act, Chapter 36, Subchapters C-E; Chapter 51, §51.009; and Chapter 53, Subchapters C-E, Proceedings) modified to reflect the appropriate intervention deadline, shall describe the application and shall be written in both English and Spanish. Notice shall be published within 40 days of the date the presiding officer files an order approving the notice format. The ILEC shall file an affidavit of completion of published notice within ten days following such completion. The presiding officer shall cause notice to be published in the *Texas Register* within 30 days of the date an order of approval of the notice format is filed. Additionally, the ILEC shall provide a copy of its application to the Office of Public Utility Counsel on the same day the application is filed with the commission's Filing Clerk.

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(2) **Intervention.** The intervention deadline shall be no sooner than ten days after the last date notice is published. On or before the intervention deadline, any interested person may file a request to intervene in the project. The presiding officer shall rule on a request to intervene, in accordance with Procedural Rule §22.103 of this title (relating to Standing to Intervene) within ten days from the date the request for intervention is filed with the commission's Filing Clerk. Intervention by an interested person does not by itself require that the project be docketed.

(3) **Discovery.** Discovery may commence on the date the application is filed in accordance with the commission's Procedural Rules, Chapter 22, Subchapter H of this title (relating to Discovery Procedures).

(4) **Interim surcharges.** Not more than 30 days after the intervention deadline, the presiding officer shall grant or deny, in whole or in part, a request for interim relief and may approve or modify a proposed interim ELC surcharge in accordance with Procedural Rule §22.125 of this title (relating to Interim Relief).

(5) **Sufficiency review and requests for exemption**. Within 30 days after the filing of an ILEC application, the Office of Regulatory Affairs shall file comments on the sufficiency of the application and on any request for exemption filed by the ILEC under subsection (e)(8) of this section. Not more than 30 days after the Office of Regulatory Affairs' comments are filed, the ILEC shall file a response and may amend or supplement its application. Not more than ten days after the ILEC's response is filed, the Office of Regulatory Affairs shall file a recommendation to the presiding officer addressing whether the application is sufficient and whether any requests for exemption should be granted.

(6) **Docketing.** If the Office of Regulatory Affairs or any intervenor files, within 30 days after the intervention deadline, a request to docket the project, the presiding officer shall docket the project. Upon docketing, the presiding officer shall ascertain whether the parties prefer to pursue settlement negotiations or alternative dispute resolution. If so, the presiding officer shall abate the docket for a reasonable period. If the parties prefer to establish a procedural schedule, the presiding officer may refer the docket to the State Office of Administrative Hearings or may take other appropriate action. If neither the Office of Regulatory Affairs nor an intervenor requests docketing, the presiding officer shall administratively approve or modify the application within 40 days after the intervention deadline.

(g) **Calculation of initial ELCS surcharges**. An initial ELCS surcharge shall be calculated using the formula described in this subsection unless the presiding officer, for good cause, modifies the formula.

(1) **Numerator.** First, sum the lost revenues and costs incurred to determine the ILEC's annual ELCS requirement. Second, use the most current count of access lines to calculate the amount of ELCS fee revenue received annually by the ILEC. Subtract the annual ELCS fee revenue from the annual ELCS requirement. The result is the annual residual. Third, divide the annual residual by 12 to obtain the monthly residual, the numerator.

(2) **Denominator.** First, obtain the most current count of residential and business lines served by the ILEC in Texas. Second, multiply the number of business lines by two. Third, add the doubled business lines to the number of residential lines. This total is the denominator.

(3) **ELCS surcharge formula**. Divide the numerator in paragraph (1) of this subsection by the denominator in paragraph (2) of this subsection to obtain the monthly ELCS surcharge per residential line. Multiply the monthly ELCS surcharge per residential line by two to obtain the monthly ELCS surcharge per business line. Round ELCS surcharges up or down to the nearest penny.

(h) **Adjustments to ELCS surcharges**. ELCS surcharges shall be adjusted using the formula described in subsection (g) of this section, except that:

(1) the numerator established in a previous application may be modified to consider new information relevant to development of the residual:

(A) for any ELCS surcharge approved before February 1, 2000, if the commission reserved the right to subsequently review the costs incurred and lost revenues associated with the ELCS surcharge; or

(B) for any ELCS surcharge approved after February 1, 2000; and

(2) the denominator shall be modified to reflect the most current count of local exchange access lines at the time of the adjustment. For ELCS surcharges approved before February 1, 2000, if the number of access lines in the denominator initially included only non-petitioning exchanges, an adjustment in the number of access lines shall include only non-petitioning exchanges.

(i) **Duration**. An ILEC shall select a preferred duration of applicability of its proposed ELCS surcharges from alternatives listed in this subsection. The commission may establish ELCS surcharges for any duration.

(1) **Permanent**. An ILEC may initiate a review of all of its rates and charges by filing a rate filing package. Following a review of the ILEC's cost of service pursuant to Substantive Rule §26.201 of this title (relating to Cost of Service), any resulting ELCS surcharge shall be considered permanent unless modified, for good cause, by the commission.

(2) **Phase-down**. If an ILEC's application to establish or increase an ELCS surcharge contains all information required in subsection (e)(1)-(6) of this section, the ILEC may propose a phase-down of its ELCS surcharge for a duration of five years. The phase-down shall be implemented by reducing each ELCS surcharge by 20% at the end of each year of the phase-down period. At the end of the five-year phase-down period, the ELCS surcharge shall be zero. Tariff sheet(s) filed by the ILEC shall contain ELCS surcharges for each of the five years of the phase-down period.

(3) **Phase-out**. An ILEC that files an application to establish or increase an ELCS surcharge may propose a phase-out of its ELCS surcharge. A proposed phase-out shall be for a duration not to exceed two years. At the end of the phase-out period, the ELCS surcharge shall be zero. Tariff sheet(s) filed by the ILEC shall contain ELCS surcharges for the two-year period and shall state the two-year duration of applicability of the ELCS surcharges.

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§26.223. Prohibition of Excessive COA/SPCOA Usage Sensitive Intrastate Switched Access Rates.

(a) **Purpose.** The purpose of this section is to implement Public Utility Regulatory Act (PURA) §52.155, which addresses the usage sensitive intrastate switched access rates that can be charged by a telecommunications utility that holds a certificate of operating authority (COA) or a service provider certificate of operating authority (SPCOA) (COA/SPCOA).

(b) **Applicability.** This section applies to usage sensitive intrastate switched access rates of COA/SPCOA holders, including but not limited to, originating and terminating carrier common line (CCL), originating and terminating local switching (LS), originating and terminating switched transport (TR), originating and terminating tandem switching (TS), and originating and terminating tandem switched transport (TST).

(c) **Requirements for COA/SPCOA usage sensitive intrastate switched access rates.** A telecommunications utility that holds a COA or a SPCOA may not charge a higher aggregate amount, including any rate elements not charged by the holder of the certificate of convenience and necessity (CCN), for originating or terminating usage sensitive intrastate switched access than the prevailing rates charged by the CCN holder or the holder of a COA issued under Chapter 65 in whose territory the call originated or terminated unless:

(1) the commission specifically approves the higher rate; or

(2) subject to commission review, the telecommunications utility establishes statewide average composite originating and terminating usage sensitive intrastate switched access rates based on a reasonable approximation of traffic originating and terminating between all holders of certificates of convenience and necessity in this state.

(d) **Governance of Switched Access Rates under PURA Chapter 65.** Notwithstanding subsection (c), PURA Chapter 65 governs the switched access rates of a company that holds a COA issued under PURA Chapter 65.

(e) **Statewide average composite rates.** Weighted statewide average composite usage sensitive intrastate switched access rates will be developed based upon the submission of CCN holders' compliance filings pursuant to subsection (g) of this section.

(1) **Methodology.** The commission shall use the following information and methodology for development of the weighted statewide average composite usage sensitive intrastate switched access rates separately for each originating and for each terminating rate element category in subsection (g)(1) - (6) of this section:

(A) Each CCN holder's individual rate elements' rates will be multiplied by the total actual minutes of use (MOUs) for that rate element, producing a total revenue for each rate element for each CCN holder.

(B) Revenues for each CCN holder's rate element will be added to create a statewide total revenue for that rate element.

(C) The actual MOUs for each CCN holder's rate element will be added to create a statewide total actual MOUs for that rate element.

(D) The statewide total revenue for that rate element will be divided by the statewide total actual MOUs for that rate element, producing a weighted statewide average composite usage sensitive intrastate switched access rate for that switched access rate element.

(E) Additional revenues submitted under subsection (g)(8) of this section for monthly rate elements associated with switched access shall be converted to MOU rates using the local switching MOUs provided by the CCN holder. The converted MOU rates shall be used to

revise the weighted statewide average composite usage sensitive intrastate switched access rates calculated pursuant to subparagraph (D) of this paragraph.

(2) **Re-calculation.**

(A) The commission shall re-calculate the weighted statewide average composite usage sensitive intrastate switched access rates annually until June, 2010 based upon the submissions of the CCN holders, as required in subsection (g) of this section. The commission shall endeavor to complete such re-calculation by November 15 of each year.

(B) Any certificated telecommunications utility may file a petition requesting that the commission re-calculate the weighted statewide average composite usage sensitive intrastate switched access rates at any time. The commission shall grant the petition for re-calculation if it concludes that the petition has provided just cause for re-calculation.

(C) As provided in subsection (g) of this section, the commission may also require compliance submissions by CCN holders for re-calculation of the weighted statewide average composite usage sensitive intrastate switched access rates as appropriate because of significant changes in usage sensitive intrastate switched access rates or in response to the request of affected parties, as specified in subparagraph (B) of this paragraph.

(D) After June 2010, the commission shall re-calculate the weighted statewide average composite usage sensitive intrastate switched access rates biennially. The commission shall endeavor to complete such re-calculation by November 15.

(f) **Approval of higher rates.**

(1) A COA/SPCOA holder seeking approval of originating and/or terminating usage sensitive intrastate switched access rates that in the aggregate, including any rate elements not charged by the CCN holder, are higher than the aggregate of the originating and/or terminating usage sensitive switched access rate elements charged by the CCN holder in the COA/SPCOA's territory may do so by filing an application with the commission subject to the procedures outlined in Procedural Rule §22.33 of this title (relating to Tariff Filings). The COA/SPCOA's application must provide, at a minimum, the following information:

(A) Cost justification for each rate element.

(B) Rationale for implementation of the higher rate for each rate element.

(2) A COA/SPCOA holder's application must address all of the applicable switched access rate elements in subsection (b) of this section.

(3) The commission shall publish notice of the application in the *Texas Register*.

(g) **Requirement for CCN holders compliance submissions.** Until June, 2010, all CCN holders must provide the following intrastate data to the commission as a compliance filing on an annual basis; and as of June, 2010 and thereafter on a biennial basis, by September 15:

(1) The current tariffed rate for originating and terminating CCL.

(2) The current tariffed rate for originating and terminating LS.

(3) The current tariffed rate for originating and terminating TR.

(4) The current tariffed rate for originating and terminating TS.

(5) The current average per minute rate for originating and terminating TST.

(6) The current originating and terminating tariffed rate(s) for any other usage sensitive intrastate switched access rate element(s).

(7) The total actual originating and terminating MOUs for the most recent 12-month period (August 1 through July 31) for each rate element in paragraphs (1) – (6) of this subsection that is billed on an MOU basis.

(8) The total revenues for the most recent 12-month period (August 1 through July 31) received from any switched access monthly rate element used to transport or switch the access traffic listed in

paragraphs (1) - (6) of this subsection that may be specifically attributable to the element identified (*e.g.*, local switching, transport).

(h) **Requirements of COA/SPCOA holders compliance submissions.**

(1) No later than 20 days after the effective date of the commission order re-calculating the weighted statewide average composite usage sensitive switched access rates, COA/SPCOA holders shall:

(A) file an application under subsection (f) of this section; or

(B) file compliance tariffs/price lists to be effective 10 days from the filing date of the compliance tariffs/price lists containing originating and terminating usage sensitive intrastate switched access rates that do not exceed the prevailing rates charged by the CCN holder in each territory in which the COA/SPCOA holder operates; or

(C) file compliance tariffs/price sheets with originating and terminating usage sensitive intrastate switched access rates that do not exceed the re-calculated weighted statewide average composite usage sensitive switched access rates established by the commission to be effective 10 days from the filing date of the compliance tariffs/price sheets; or

(D) file a letter with the commission demonstrating that no rate revisions are necessary in order to comply with this section.

(2) If a COA/SPCOA holder establishes usage sensitive intrastate switched access rates pursuant to paragraph (1)(B) of this subsection and the underlying CCN holder(s) whose rates were the basis for the COA/SPCOA holder's usage sensitive intrastate switched access rates are modified, no later than 20 days after said CCN holder's rates are modified, the COA/SPCOA holder shall:

(A) file an application under subsection (f) of this section; or

(B) file compliance tariffs/price lists to be effective 10 days from the filing date of the compliance tariffs/price lists containing originating and terminating usage sensitive intrastate switched access rates that do not exceed the prevailing rates charged by the CCN holder in each territory in which the COA/SPCOA holder operates; or

(C) file compliance tariffs/price sheets with originating and terminating usage sensitive intrastate switched access rates that do not exceed the most recent commission established weighted statewide average composite usage sensitive switched access rates established by the commission to be effective 10 days from the filing date of the compliance tariffs/price sheets; or

(D) file a letter with the commission demonstrating that no rate revisions are necessary in order to comply with this section.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter J. COSTS, RATES AND TARIFFS

§26.224. Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies.

(a) **Application**. This section applies to any electing company, as the term is defined in the Public Utility Regulatory Act (PURA) §58.002. Other sections applicable to an electing company, include, but are not limited to, §26.225 of this title (relating to Requirements Applicable to Nonbasic Services for Chapter 58 Electing Companies), §26.226 of this title (relating to Requirements Applicable to Pricing Flexibility for Chapter 58 Electing Companies), and §26.227 of this title (relating to Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58 Electing Companies).

(b) **Purpose**. The purpose of this section is to establish requirements and procedures relating to the provision of basic network services.

(c) **Basic network services.**

(1) **Services included in basic network services.** Unless reclassified pursuant to PURA §58.024, the following are classified as basic network services pursuant to PURA §58.051(a):

(A) Flat rate residential local exchange telephone service, including primary directory listings and the receipt of a directory and any applicable mileage or zone charges;

(B) Residential tone dialing service;

(C) Lifeline and tel-assistance service;

(D) Service connection for basic residential services;

(E) Direct inward dialing service for basic residential services;

(F) Private pay telephone access service;

(G) Call trap and trace service;

(H) Access for all residential and business end users to 9-1-1 service provided by a local authority and access to dual party relay service;

(I) Mandatory residential extended area service arrangements;

(J) Mandatory residential extended metropolitan service or other mandatory residential toll-free calling arrangements; and

(K) Residential caller identification services if the customer to whom the service is billed is at least 65 years of age.

(2) **Separate tariff requirement.** Consistent with PURA §58.051(b), a basic network service offered by an electing company to a customer as a component of a package or other pricing flexibility offering shall also be offered by the electing company as a separately tariffed service.

(3) **Basic network service rates capped.** The rates for basic network services for an electing company may not increase before September 1, 2005, except as provided for in subsection (f) of this section relating to rate increases prior to the rate cap expiration.

(4) **Basic network service rates charged.** The rates an electing company may charge during the period in which rates are capped are the rates charged by the company on June 1, 1995, or, for a company that elects after September 1, 1999, the rates charged on the date of its election.

(5) **Pricing flexibility.** An electing company may offer pricing flexibility for basic network services pursuant to the requirements of §26.226 of this title.

(d) **Requirement for changes to terms of a tariff offering.** Prior to being offered, a change in the terms of a basic network service tariff offering, such as rate increases and decreases of a basic network service, must receive commission approval. Section 26.207 of this title (relating to Form and Filing of Tariffs) and §26.208 of this title (relating to General Tariff Procedures) shall apply to tariffs offering a basic network service.

(e) **Establishment of a long run incremental cost floor.** For purposes of this section, long run incremental cost (LRIC) shall be consistent with §26.215 of this title (relating to Long Run Incremental Cost

Methodology for Dominant Certificated Telecommunications Utility (DCTU) Services). Establishment of a LRIC floor requires commission approval of a cost study prepared by an electing company pursuant to the standards in §26.214 of this title (relating to Long Run Incremental Cost (LRIC) Methodology for Services provided by Certain Incumbent Local Exchange Companies (ILECs) or §26.215 of this title, as applicable. After commission approval of a LRIC floor for a particular service, an electing company may change the rates of that service in accordance with the procedures in this section. The procedures in subsection (i) of this section, relating to rate decreases for basic network services, may not be available to an electing company for a service that does not have a LRIC floor.

(f) **Rate increase prior to rate cap expiration.** For a four-year period following Chapter 58 election or until September 1, 2005, whichever occurs later, an increase in the rate for a basic network service is permitted only after commission approval and only within the following parameters:

(1) A rate increase for changes made by the Federal Communications Commission, as provided by PURA §58.056;

(2) A rate increase for companies with fewer than five million access lines that are complying with infrastructure commitments, as provided by PURA §58.057;

(3) A rate group reclassification, as provided by PURA §58.058.

(g) **Procedure for a rate increase prior to rate cap expiration.**

(1) Prior to the rate cap expiration, an electing company is required to file an application to propose an increase in the rate for a basic network service. The application shall refer to this section, shall provide sufficient documentation to demonstrate that the rate increase meets the criteria prescribed in PURA Chapter 58, shall describe the increase, and shall identify the classes of customers and competitors to be affected by the electing company's application. The application shall also include any tariff sheets reflecting the proposed basic network service rate increase, as well as all data necessary to support the application. The application shall include a copy of the text of any proposed notice to customers. The proposed notice to customers shall comply with §26.208 of this title and shall meet the criteria prescribed in PURA §58.059 and §53.103. The application shall also state the electing company's preferred effective date, which shall be no earlier than 90 days after completion of notice.

(2) The commission shall cause notice of the application to be published in the *Texas Register*. The *Texas Register* notice shall state the intervention deadline, which shall be no earlier than 40 days following publication of notice. After publication of notice in the *Texas Register*, the presiding officer shall establish a deadline for the filing of a staff recommendation, which shall be no earlier than five days following the intervention deadline.

(3) Within 20 days after filing of the application, the presiding officer shall notify the applicant if material deficiencies exist in the application and if the proposed notice is inadequate.

(4) Within 50 days after filing of the application, the applicant shall file an affidavit attesting to the fact that notice to customers was published in accordance with the requirements of PURA §58.059 and §53.103. The affidavit shall contain a copy of all notice given.

(5) Following receipt of a request for intervention filed by an affected party, or on the recommendation of commission staff, or on the commission's own motion, the commission may suspend the effective date of the proposed rate increase and may hold a hearing. Within 185 days of the filing of a sufficient application, the commission shall issue an order approving or modifying the rate increase or, alternatively, rejecting the rate increase if it is not in compliance with this section and PURA §§58.056, 58.057 or 58.058. Any order modifying or rejecting the proposed rate increase shall specify why the proposed increase is not in compliance with the applicable provisions of PURA §§58.056, 58.057 or 58.058 and the means by which the proposed increase may be brought into compliance.

(h) **Rate increase after rate cap expiration.** After a four-year period following Chapter 58 election or until September 1, 2005, whichever occurs later, a basic network service rate increase may be made pursuant to PURA §58.060.

(i) **Rate decrease.** Consistent with PURA §58.055(c), an electing company may decrease a rate for a basic service at any time to an amount above the service's appropriate cost. If the electing company has been required to perform or has elected to perform a long run incremental cost study, the appropriate cost for the service is the service's long run incremental cost.

(1) After commission approval of a LRIC floor, an electing company shall follow the procedures in this subsection to decrease a rate for a basic network service or to change the tariff terms of a basic network service.

(2) An electing company shall file an application to decrease the rate for or change the tariff terms of a basic network service. On the same date, an electing company shall file one or more tariff sheets to decrease a rate for or change the tariff terms of a basic network service with the application and all data necessary to support the application shall accompany the tariff sheets.

(3) The commission shall cause notice of the application to be published in the *Texas Register*. The *Texas Register* notice shall state the intervention deadline, which shall be no earlier than 15 days following publication of notice. On or before five days after the intervention deadline, commission staff may file a recommendation to suspend, docket or reject the application. If either a request for intervention or a recommendation to docket is filed, the expedited administrative procedures in this subsection shall no longer apply. If neither an intervention request nor a staff recommendation to suspend, docket or reject the application is filed, the tariff sheets shall be approved by the commission effective ten days following the intervention deadline.

(j) **Proprietary or confidential information.**

(1) Information filed pursuant to this rule is presumed to be public information. An electing company shall have the burden of establishing that information filed pursuant to this rule is proprietary or confidential.

(2) Nothing in this subsection shall be construed to change the presumption that information filed pursuant to this rule is public information. An electing company that intends to rely upon data it purports is proprietary or confidential in support of an application made pursuant to this section shall submit two copies of the proprietary or confidential data to Central Records for use by the commission staff subject to a commission-approved protective agreement. An electing company that intends to rely upon proprietary or confidential data has the burden of providing such data on the same date the associated tariff sheets are filed. In the event an electing company's proprietary or confidential data is not provided with the associated tariff sheets, the procedural schedule shall be adjusted day-for-day to reflect the number of days the proprietary or confidential data is delayed.

(k) **Additional notice requirement for an electing company serving more than five million access lines.** In addition to the notice requirements of §26.208 of this title and those applicable to informational notice filings, an electing company serving more than five million access lines in this state shall, until September 1, 2003:

(1) Comply with the following notice requirements when proposing any changes in the generally available prices and terms under which the electing company offers basic telecommunications services regulated by the commission at retail rates to subscribers that are not telecommunications providers, including:

(A) Introduction of any new features or functions of basic services;

(B) Promotional offerings of basic services; or

(C) Discontinuation of then-current features or services.

(2) Notice shall be provided to the following persons:

(A) A person who holds a certificate of operating authority in the electing company's certificated area or areas; or

(B) A person who has an effective interconnection agreement with the electing company.

(3) The following timelines shall apply to the additional notice requirement:

(A) If the electing company is required to give notice to the commission, at the same time the company provides that notice; or

(B) If the electing company is not required to give notice to the commission, at least 45 days before the effective date of a price change or 90 days before the effective date of a change other than a price change, unless the commission determines that the notice should not be given.

(l) **Semi-annual notice for rates or terms of service.** Semi-annually, an electing company shall notify affected persons, either by bill insert, bill message, or direct mail, that proposed changes in the rates or terms of basic network services are regularly published in the *Texas Register* through the Office of the Secretary of State. Such notification shall also appear in the public information pages of all telephone directories published in Texas. The notification shall identify the Internet address for the *Texas Register* (www.sos.state.tx.us) and shall provide a toll-free phone number for affected persons to request direct notice from an electing company of proposed changes in the rates or terms of service. For purposes of notice, affected persons include the applicant's Texas customers, persons registered with the commission to offer long distance service, and persons certificated by the commission to provide local exchange telephone service.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter J. COSTS, RATES AND TARIFFS

§26.225. Requirements Applicable to Nonbasic Services For Chapter 58 Electing Companies.

(a) **Application.** This section applies to any electing company as the term is defined in the Public Utility Regulatory Act (PURA) §58.002. Other sections applicable to an electing company include, but are not limited to, §26.224 of this title (relating to Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies), §26.226 of this title (relating to Requirements Applicable to Pricing Flexibility for Chapter 58 Electing Companies), and §26.227 of this title (relating to Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58 Electing Companies.). PURA §55.003 and §55.004 do not apply to the retail services offered by an electing company, or to the retail nonbasic services offered by a transitioning company, as defined by PURA §65.002.

(b) **Purpose.** The purpose of this section is to establish requirements for nonbasic services.

(c) **Nonbasic services**.

(1) Consistent with PURA §58.151 and §58.024, these services are nonbasic services:

(A) flat rate business local exchange telephone service, including primary directory listings and the receipt of a directory, and any applicable mileage or zone;

(B) business tone dialing service;

(C) service connection for all business services;

(D) direct inward dialing (DID) for basic business services;

(E) public pay telephone services, 0+ and 0- operator services and directory assistance services;

(F) call forwarding, call return, caller identification, call waiting and other custom calling services and call control options, except that residential call waiting is a basic network service until July 1, 2006;

(G) speed dialing and three-way calling;

(H) central office based PBX-type services;

(I) billing and collection services, including installment billing and late payment plans for electing company customers;

(J) integrated services digital network (ISDN) services;

(K) new services;

(L) 1-plus intraLATA message toll service (MTS);

(M) services described in the WATS tariff of an electing company as the tariff existed on January 1, 1995;

(N) 800 service and foreign exchange service;

(O) private line services and special access services;

(P) paging services and mobile services (IMTS);

(Q) 911 service provided to a local authority, if the service is available from a provider other than the electing company;

(R) all other services subject to the commission's jurisdiction that are not specifically classified as basic network services in PURA §58.051;

(S) any basic network service reclassified by the commission as a nonbasic service pursuant to PURA §58.024.

(2) Consistent with PURA §58.155, neither interconnection to competitive providers nor interconnection for commercial mobile service providers is addressed in this section.

(d) **Substantive requirements**. An electing company that seeks to introduce or modify rates, terms or conditions of a nonbasic service tariff shall follow the substantive requirements in this section and the

procedural requirements in §26.227 of this title. Additionally, an electing company that seeks to flexibly price a nonbasic service shall follow the requirements in §26.226 of this title.

(1) **Pricing standards**. The price of a nonbasic service may not be preferential, prejudicial, discriminatory, predatory, or anticompetitive.

(A) Price ceilings. This subparagraph specifies the price ceilings for certain nonbasic services. Except as specified in this subparagraph, nonbasic services have no price ceiling.

(i) Until September 1, 2005, a nonbasic service listed in subsection (c)(1)(A)-(D) of this section shall be priced at or below the price in effect on September 1, 1999.

(ii) Until September 1, 2005, a Basic Rate Interface (BRI) ISDN service, which comprises up to two 64 Kbps B-channels and one 16 Kbps D-channel, shall be priced at or below the price in effect on September 1, 1999.

(iii) An electing company shall provide to a residential customer the first three local directory assistance inquiries in a monthly billing cycle at a maximum price of zero dollars ($.00) until July 1, 2006.

(iv) Consistent with PURA §58.302, switched access services shall be priced at or below the lesser of the rates in effect on September 1, 1999, or the applicable rates described in PURA §58.301 as those rates were further reduced when the Texas universal service fund was implemented on July 1, 2000.

(B) Price floors. A price that is set at or above the long run incremental cost of providing a service is presumed not to be a predatory price. The long run incremental cost of a nonbasic service must be established before the price floor of a nonbasic service can be determined, pursuant to PURA §58.152. Establishment of a long run incremental cost requires commission approval of a cost study prepared by an electing company pursuant to the standards in §26.214 of this title (relating to Long Run Incremental Cost (LRIC) Methodology for Services Provided by Certain Incumbent Local Exchange Companies (ILECS)) or §26.215 of this title (relating to Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility (DCTU) Services), as applicable. Any application to establish or modify a long run incremental cost shall be filed by an electing company with the commission's Filing Clerk on or before the date a related informational notice is filed. Such an application shall be filed separately from the related informational notice. The minimum price of a nonbasic service shall be the lesser of:

(i) the price for the service in effect on September 1, 1999, except that this clause shall not be considered for services that had either a rate of zero or no existing rate on September 1, 1999; or

(ii) the long run incremental cost of the service in accordance with the imputation rules and requirements prescribed by or under PURA, Chapter 60, Subchapter D.

(2) **Separately tariffed services.** Any nonbasic service offered by an electing company to customers as a component of a package or other pricing flexibility offering shall also be offered by the electing company as a separately tariffed service.

(e) **New service.**

(1) A new service, as the term is defined in §26.5 of this title (relating to Definitions), is a nonbasic service under subsection (c)(1)(K) of this section.

(2) To introduce a new service tariff, an electing company shall follow the requirements in this section and the procedures in §26.227 of this title. If a new service is offered by an electing company as a component of a package, the new service shall also be offered as a separately tariffed service and the separately tariffed service shall be subject to the pricing standards in subsection (d) of this section.

(3) A package of services that includes one or more new services and one or more existing services shall not be considered a new service. To introduce such a package, an electing company shall

follow the requirements in this section, the requirements in §26.226 of this title and the procedures in §26.227 of this title.

§26.226. Requirements Applicable to Pricing Flexibility for Chapter 58 Electing Companies.

(a) **Application.** This section applies to any electing company as the term is defined in the Public Utility Regulatory Act (PURA) §58.002. Other sections applicable to an electing company, include, but are not limited to §26.211 of this title (relating to Rate-Setting for Services Subject to Significant Competitive Challenges), §26.224 of this title (relating to Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies), §26.225 of this title (relating to Requirements Applicable to Nonbasic Services for Chapter 58 Electing Companies) and §26.227 of this title (relating to Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58 Electing Companies). PURA §55.003 and §55.004 do not apply to the retail services offered by an electing company, or to the retail nonbasic services offered by a transitioning company, as defined by PURA §65.002.

(b) **Purpose.** The purpose of this section is to establish requirements for Chapter 58 electing incumbent local exchange companies (ILECs) to exercise pricing flexibility.

(c) **Pricing flexibility.** An electing ILEC shall exercise pricing flexibility in accordance with this section and §26.227 of this title.

(1) Pricing flexibility includes:

(A) customer specific contracts;

(B) packaging of services;

(C) volume, term, and discount pricing;

(D) zone density pricing, with a zone to be defined as an exchange; and

(E) other promotional pricing.

(2) A discount or other form of pricing flexibility for a basic or nonbasic service may not be preferential, prejudicial, discriminatory, predatory or anticompetitive.

(3) This section does not prohibit a volume discount or other discount based on a reasonable business purpose.

(4) Notwithstanding PURA §58.052(b) or PURA, Chapter 60, Subchapter F, an electing company may exercise pricing flexibility for basic network services, including the packaging of basic network services with any other regulated or unregulated service or any service of an affiliate.

(5) An electing company may flexibly price a package that includes a basic network service in any manner provided by paragraph (1) of this subsection.

(6) An electing company may use pricing flexibility for a basic or nonbasic service.

(d) **Pricing standards.** An electing company exercising pricing flexibility shall price its offerings pursuant to this subsection.

(1) The electing ILEC shall set the price of a package of services containing basic network services and nonbasic services at any level at or above the lesser of:

(A) the sum of the long run incremental costs of any basic network services and nonbasic services contained in the package; or

(B) the sum of tariffed prices of any basic network services contained in the package and the long run incremental costs of nonbasic services contained in the package.

(2) A price that is set at or above the long run incremental cost of a service is presumed not to be a predatory price.

(3) The price of a package that combines regulated products or services with unregulated products or services shall, in addition to the requirements of paragraph (1) of this subsection, recover the cost to the electing company of acquiring and providing the unregulated products or services. In this section, unregulated products or services are products or services provided by an entity that is unaffiliated with the electing company.

(4) The price of a package that combines regulated products or services with the products or services of an affiliate shall, in addition to the requirements of paragraph (1) of this subsection, recover the cost to the electing company of acquiring and providing the affiliate products or services, which shall be greater than or equal to the cost to the affiliate of acquiring and/or providing the products or services. The cost to the electing company of acquiring or providing the affiliate's products or services shall be valued in a manner consistent with FCC requirements and with paragraph (5) of this subsection. A group of products or services that are jointly marketed by an electing company in conjunction with one or more of its affiliates shall be priced in a manner consistent with FCC requirements, if any, and with paragraph (5) of this subsection.

(5) Consistent with PURA §52.051(1)(C), an electing company shall not use revenues from regulated monopoly services to subsidize services subject to competition.

(e) **Requirements for customer-specific contracts.** Consistent with PURA §58.003, an electing ILEC may enter into customer-specific contracts for certain basic network services and certain nonbasic services as provided in this subsection. An electing ILEC may but is not required to file customer-specific contracts with the commission.

(1) An electing company serving fewer than five million access lines may offer customer-specific contracts in accordance with this subsection.

(A) An electing company serving fewer than five million access lines shall not offer customer-specific contracts until it notifies the commission of the company's binding commitment to make the following infrastructure improvements consistent with PURA §58.003(b):

(i) install Common Channel Signaling 7 capability in each central office; and

(ii) connect all of the company's serving central offices to their respective local access and transport area (LATA) tandem central offices with optical fiber or equivalent facilities.

(B) The commitments described by subparagraph (A) of this paragraph do not apply to exchanges of the company sold or transferred before, or for which contracts for sale or transfer are pending on, September 1, 2001. In the case of exchanges for which contracts for sale or transfer are pending as of March 1, 2001, where the purchaser withdrew or defaulted before September 1, 2001, the company shall have one year from the date of withdrawal or default to comply with the commitments.

(2) An electing company serving more than five million access lines may offer customer specific contracts in accordance with this subsection.

(A) Unless the other party to the contract is a federal, state, or local governmental entity, an electing company serving more than five million access lines may not offer in an exchange a service, or an appropriate subset of a service, listed in PURA §58.051(a)(1) - (4) or §58.151(1) - (4) in a manner that results in a customer-specific contract until the earlier of:

(i) September 1, 2003; or

(ii) the date on which the commission finds that at least 40% of the total access lines for that service or appropriate subset of that service in that exchange are served by competitive alternative providers that are not affiliated with the electing company.

(B) Pursuant to subparagraph (A)(ii) of this paragraph, the commission may find that the following subsets of services are served by an alternative provider that is not affiliated with an ILEC serving more than five million access lines:

(i) flat residential rate local exchange telephone service;

(ii) residential primary directory listings;

(iii) residential tone dialing service;

(iv) lifeline and tel-assistance service;

(v) service connection for basic residential services;
(vi) flat business rate local exchange telephone service;
(vii) business primary directory listings;
(viii) business tone dialing service;
(ix) service connection for all business services;
(x) direct inward dialing for basic business services; and
(xi) receipt of a directory.

(3) This subsection does not preclude an electing company from offering a customer-specific contract to the extent allowed by PURA as of August 31, 1999.

§26.227. Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58 Electing Companies.

§26.227. Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58 Electing Companies.

(a) **Application.** This section applies to any electing company as the term is defined in the Public Utility Regulatory Act (PURA) §58.002 who chooses to offer nonbasic services and/or exercise pricing flexibility for basic and nonbasic services through informational notice filings. Other sections applicable to an electing company include, but are not limited to, §26.224 of this title (relating to Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies), §26.225 of this title (relating to Requirements Applicable to Nonbasic Services for Chapter 58-Electing Companies) and §26.226 of this title (relating to Requirements Applicable to Pricing Flexibility for Chapter 58 Electing Companies). Notwithstanding other provisions of this section, PURA §55.003 and §55.004 do not apply to the retail services offered by an electing company, or to the retail nonbasic services offered by a transitioning company, as defined by PURA §65.002.

(b) **Purpose.** The purpose of this section is to establish procedures for an electing company that chooses to provide an informational notice to introduce nonbasic services, including new services, and/or to exercise pricing flexibility for basic and nonbasic services, and for complaints regarding service offerings introduced through informational notice filings.

(c) **Informational notice filing and notice requirements related to pricing flexibility and nonbasic services, including new services.**

(1) **Notice requirements.**

(A) General notice requirements. An electing company shall provide the informational notice in compliance with this section to the commission, to the Office of Public Utility Counsel (OPC), and to any person who holds a certificate of operating authority in the electing company's certificated area or areas, or who has an effective interconnection agreement with the electing company.

(B) Unless an interconnection agreement contract specifies otherwise, an incumbent local exchange carrier shall continue to provide to affected resellers of retail services the same notice of rate changes or withdrawal of detariffed services that it was required to provide prior to detariffing.

(2) **Filing requirements:**

(A) Filing of informational notice and confidential information. At the time the informational notice is filed in Central Records, a copy of the informational notice, including confidential information, shall be delivered to OPC. In addition to the record copy, an additional copy of any confidential information shall be filed in Central Records for use by the commission staff.

(i) The commission shall assign each informational notice a unique control number and shall stamp the tariff sheets "received".

(ii) The commission staff shall file any notice of deficiencies for incomplete filings not in compliance with this section or pleading alleging that the service offering is inappropriately filed as an informational notice filing within three working days after the date of the filing of the informational notice.

(iii) Within two working days after the date of the commission staff's filing, the applicant shall file an explanation of the actions it has taken or intends to take in response to a notice or pleading filed under clause (ii) of this subparagraph.

(B) Effective date. A service offering shall be effective no earlier than ten days after the electing company files a complete informational notice with the commission.

(C) Access to confidential information. Access to confidential information filed with the commission as part of an informational notice filing shall be available to commission staff and OPC, upon execution of a commission approved protective agreement, at the time the informational notice is filed.

(D) Format of filing. An informational notice under this section must include the following elements:

(i) name of company;

(ii) PURA chapter under which company operates;

(iii) date of submission;

(iv) effective date;

(v) new and/or revised tariff pages, written in plain language and conforming with §26.207 of this title (relating to Form and Filing of Tariffs); except that an informational notice filing that cross-references the rates, terms, and/or conditions of the utility's interstate switched-access tariff for an equivalent service may be considered sufficient. To implement concurrence of a utility's federal interstate switched-access tariff and its Texas intrastate switched-access tariff, the utility in the informational notice portion of its initial filing shall reference the uniform resource locator (URL or worldwide web address) on the Federal Communications Commission (FCC) website specific to the interstate switched-access tariff. Additionally, the utility shall reference the URL on the utility's commercial website specific to the intrastate switched-access tariff either in the informational notice portion of the filing or in the page(s) attached to the informational notice portion of the filing. Thereafter, the utility must notify the commission, in an informational notice filing, within 10 business days of any changes to the referenced concurring interstate rates. In any such filing, the utility shall provide in the informational notice portion of its filing the corresponding FCC Transmittal Number, reference the URL on the FCC website specific to the transmittal, specify which rate elements changed, and reference the URL on the utility's commercial website specific to the intrastate switched-access tariff. The utility must also file an update to any URL(s) referenced in its intrastate tariff within 10 business days of any changes to such URL(s). If switched-access rates are no longer required to concur with federal rates, a new tariff must be filed;

(vi) proposed implementation date (if different from effective date);

(vii) affidavit of notice to OPC, COA holders, and parties to interconnection agreements;

(viii) type of filing (new service; pricing flexibility involving basic service; non-basic only pricing flexibility; packaging, term and volume discount or promotional offering regulated by PURA §58.004; customer specific contract; customer specific contract regulated by PURA §58.003; promotional offering);

(ix) relevant Long Run Incremental Cost (LRIC) study or LRIC study reference, and relevant support materials (confidential/proprietary/protected materials provided to commission only). When LRIC studies for which commission approval has not been obtained are provided with an informational notice filing, an application for approval of that LRIC study must be filed pursuant to the standards in §26.214 of this title (relating to Long Run Incremental Cost (LRIC) Methodology for Services Provided by Certain Incumbent Local Exchange Companies (ILECs)) or §26.215 of this title (relating to Long Run Incremental

Cost Methodology for Dominant Certificated Telecommunications Utility (DCTU) Services), as applicable, to establish a LRIC floor and shall be filed before or simultaneously with the informational filing. The electing company shall file a notice of intent to file LRIC studies pursuant to §26.214 or §26.215 of this title no later than ten days prior to the filing of the LRIC study;

(x) a response of "yes," "no," or "not applicable," with explanatory language to the following question: "Is the sum of the Total Element Long Run Incremental Cost (TELRIC)-based wholesale prices of components needed for provision of the retail service at or below the retail price set forth in this filing?" If the response is "yes" or "no," the filing must identify the components needed for the provision of the retail service, along with a list of relevant wholesale and retail prices;

(xi) a response of "yes" or "no" to the following question: "Is the service available for resale by a competitor? If the answer is "no," does the proposed price meet the standards set forth in §26.274(f) - (h) of this title (relating to Imputation)?" For purposes of this question, "available for resale" means:

(I) the service is not subject to tariffed resale restrictions; and

(II) the electing company is not aware of any constraints that would prevent a competitor from functionally provisioning the service to the competitor's customers in parity with the electing company's provisioning of the service to the electing company's customers;

(xii) for package offerings that combine regulated products or services with unregulated products or services and/or with the products or services of an electing company's affiliate, an affidavit indicating that the price of the package, in addition to the requirements of §26.226(d)(1) of this title, also recovers the cost to the electing company of acquiring and providing the unregulated products or services or the affiliate's products or services. The affidavit shall also indicate that the cost to the electing company of acquiring and providing an affiliate's products or services is greater than or equal to the cost to the affiliate of acquiring and/or providing the products or services. The cost to an electing company of acquiring or providing the affiliate's products or services shall be valued in a manner consistent with FCC requirements and with §26.226(d)(5) of this title. For a joint marketing effort that includes regulated products or services and the products or services of an affiliate, an affidavit shall be provided by each affected affiliate attesting that the affiliate's costs are recovered in a manner consistent with §26.226(d)(5) of this title and FCC requirements, if any;

(xiii) description of the offering's terms and conditions, including location of service or a statement that it is to be provided state-wide; and

(xiv) a privacy concerns statement.

(d) **Disputes as to sufficiency or appropriateness of informational notice filing.**

(1) If the electing company advises the commission by written filing that a dispute exists with respect to a notice of deficiency or the inappropriateness of an informational notice, and requests the assignment of an administrative law judge to resolve the dispute, the commission will consider the dispute to be a contested case.

(2) A contested case will also exist if the commission files a complaint addressing sufficiency or appropriateness of an informational notice filing.

(3) Parties other than the commission staff may not challenge the sufficiency of an informational notice filing.

(e) **Complaints regarding service offerings introduced by informational notice filings.** An affected person, OPC, or the commission may file a complaint at the commission on or after the date the informational notice has been filed. The filing of a complaint will initiate a contested case.

(1) A complaint addressing an informational notice filing may challenge whether the filing is in compliance with PURA and/or commission substantive rules.

(2) If a complaint challenging the price of a new service is resolved in a final order issued by this commission in favor of the complainant, the electing company shall either:

(A) not later than the tenth day after the date the complaint is finally resolved, amend the price of the service as necessary to comply with the final resolution; or

(B) discontinue the service.

(3) The commission shall dismiss a complaint filed prior to the filing of an informational notice on the grounds that the commission lacks jurisdiction to hear the complaint.

(4) All complaints shall be docketed and governed by the commission's procedural rules and shall be filed and reviewed pursuant to the following requirements:

(A) Complaints shall be captioned: COMPLAINT BY {NAME OF COMPLAINANT} REGARDING TARIFF CONTROL NUMBER(S) {NUMBER(S)} {STYLE OF TARIFF CONTROL NUMBER}.

(B) Processing. The commission shall assign each complaint filed with respect to an informational notice a unique control number. The presiding officer shall cause a copy of each complaint, bearing the assigned control number, to be filed in the relevant tariff control number(s) for the related informational notice filings.

(5) The commission staff shall have standing in all proceedings related to informational notice filings before the commission, and may intervene by filing a notice of intervention, at any time prior to determination on the merits. No motion is necessary for such intervention.

(6) A complaint filed pursuant to this section shall be considered to be an exception to the informal resolution requirements of §22.242(c) of this title (relating to Complaints).

(f) **Interim relief.** A tariff for a new service introduced by an informational notice may not be suspended during the pendency of any complaint. All other tariffs introduced by informational notice filings will remain in effect during the pendency of any complaint unless interim relief suspending the tariff is granted pursuant to this subsection.

(1) Any request that a tariff be suspended during the pendency of a complaint must meet the following requirements:

(A) the pleading must state an appropriate and bona fide cause of action;

(B) the pleading must be verified or supported with affidavits based on personal knowledge; and

(C) the pleading must set forth the following elements: probable right of recovery, probable and irreparable injury in the interim, and no adequate alternative remedy.

(2) The presiding officer shall schedule a hearing on interim relief in the form of suspension of a tariff on an expedited basis.

(3) The burden of proof shall be upon the complainant with respect to each element of proof necessary to obtain any interim relief requested by the complainant.

(g) A telecommunications provider that is not subject to rate-of-return regulation under PURA, Chapter 53:

(1) may, but is not required to, maintain on file with the commission tariffs, price lists, or customer service agreements governing the terms of providing service;

(2) may make changes in its tariffs, price lists, and customer service agreements in relation to services that are not subject to regulation without commission approval; and

(3) may cross-reference its federal tariff in its state tariff if its intrastate switched access rates are the same as its interstate switched access rates.

(h) A telecommunications provider may withdraw a tariff, price list, or customer service agreement not required to be filed or maintained with the commission under this section if the provider:

(1) files written notice of the withdrawal with the commission; and

(2) notifies its customers of the withdrawal and posts the current tariffs, price lists, or generic customer service agreements on its Internet website.

§26.228. Requirements Applicable to Chapter 52 Companies.

(a) **Application**. This section applies to incumbent local exchange companies (ILECs), as defined in the Public Utility Regulatory Act (PURA) §51.002(3), which have not elected to be regulated pursuant to PURA Chapters 58 or 59.

(b) Purpose. The purpose of this section is to establish the substantive and procedural requirements for an ILEC to introduce new services and/or to exercise pricing and packaging flexibility, including customer promotional offerings, and for complaints regarding service offerings introduced by informational notice offerings.

(c) New services. The term "new services" has the meaning assigned in §26.5 of this title (relating to Definitions) and shall include services for which no rate was in effect on September 1, 1999. An ILEC may file an informational notice to introduce a new service. An ILEC filing an informational notice pursuant to this subsection shall file the appropriate information in accordance with subsection (g)(2) of this section.

(1) **Pricing standards.**

(A) An ILEC shall price each new service at or above the service's long run incremental cost (LRIC).

(B) The price of a new service may not be preferential, prejudicial, discriminatory, predatory, or anticompetitive.

(C) A price that is set at or above the service's LRIC is presumed not to be predatory.

(2) **LRIC studies.** An ILEC may establish a service's LRIC by submitting a LRIC study, as specified in subsection (g)(2)(D)(ix) of this section, that conforms to the requirements of §26.214 of this title (relating to Long Run Incremental Cost (LRIC) Methodology for Services Provided by Certain Incumbent Local Exchange Companies (ILECs)).

(3) LRIC adoption. An ILEC serving fewer than one million access lines in Texas may establish a service's LRIC by adopting the commission-approved cost studies of a larger company for the same service.

(4) Rate adoption. In lieu of filing a LRIC study or adopting the LRIC studies of a larger company, an ILEC with less than one million access lines may adopt a rate that is identical to or higher than a larger company's tariffed rate for the same service.

(5) Packaging of new services. If an ILEC offers a new service as a component of a package, the ILEC shall also offer the new service as a separately tariffed service.

(d) **Pricing and packaging flexibility.** An ILEC may file an informational notice to exercise pricing and packaging flexibility by filing the appropriate information in accordance with subsection (g)(2) of this section.

(1) **General requirements.**

(A) Pricing flexibility includes:

(i) customer specific contracts;

(ii) packaging of services;

(iii) volume, term, and discount pricing;

(iv) zone density pricing, with a zone defined as an exchange; and

(v) other promotional pricing.

(B) A discount or other form of pricing flexibility may not be preferential, prejudicial, discriminatory, predatory, or anticompetitive.

(C) An ILEC may exercise pricing flexibility, including the packaging or joint marketing of any regulated service with any other regulated or unregulated service or any service of an affiliate.

(2) **Pricing standards.**

(A) An ILEC shall price each regulated service offered separately or as part of a package at either the service's tariffed rate or at a rate not lower than the service's LRIC.

(B) An ILEC shall price each service at or above the service's LRIC.

(C) A price that is set at or above the service's LRIC is presumed not to be predatory.

(D) The price of a package that combines regulated products or services with unregulated products or services shall recover the cost to the ILEC of acquiring and providing the unregulated products or services. In this section, unregulated products or services are products or services provided by an entity that is unaffiliated with the ILEC.

(E) The price of a package that combines regulated products or services with the products or services of an affiliate shall recover the cost to the ILEC of acquiring and providing its affiliate's products or services, which shall be greater than or equal to the cost to the affiliate of acquiring and/or providing the products or services. The cost to an ILEC of acquiring or providing the affiliate's products or services shall be valued in a manner consistent with Federal Communications Commission (FCC) requirements, to the extent such requirements are applicable to the ILEC, and with subparagraph (F) of this paragraph. A group of products or services that are jointly marketed by an ILEC in conjunction with one or more of its affiliates shall be priced in a manner consistent with FCC requirements, to the extent such requirements are applicable to the ILEC, and with subparagraph (F) of this paragraph.

(F) Consistent with PURA §52.051(1)(C), an ILEC shall not use revenues from regulated monopoly services to subsidize services subject to competition.

(3) **LRIC studies.** An ILEC may establish a service's LRIC by submitting a LRIC study, as specified in subsection (g)(2)(D)(ix) of this section, that conforms to the requirements of §26.214 of this title.

(4) **LRIC adoption.** An ILEC serving fewer than one million access lines in Texas may establish a service's LRIC by adopting the commission-approved cost studies of a larger company for the same services.

(5) **Rate adoption.** In lieu of filing a LRIC study or adopting the LRIC studies of a larger company, an ILEC with less than one million access lines may adopt a rate that is identical to or higher than a larger company's tariffed rate for the same service.

(e) **Customer promotional offerings.** An ILEC may file an informational notice to offer customer promotional offerings by filing the appropriate information in accordance with subsection (g)(2) of this section.

(1) An ILEC may offer a promotion for a regulated service for not more than 90 days in any 12-month period.

(2) Customer promotional offerings may consist of:

(A) a waiver of installation charges or service order charges, or both, for not more than 90 days in a 12-month period; or

(B) a temporary discount of not more than 25% from the tariffed rate for not more than 60 days in a 12-month period.

(3) Although ILECs are not required to file LRIC studies with informational notices regarding these customer promotional offerings, the offerings are subject to the standards for pricing flexibility in subsection (d) of this section, in the event of a complaint.

(f) **Requirements for customer specific contracts.** An ILEC may enter into customer-specific contracts for certain services as provided in §26.211 of this title (relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges). For all services not addressed in §26.211 of this title, an ILEC must offer customer-specific contracts pursuant to this section.

(g) **Procedures related to the filing of informational notices and associated tariffs.** The provisions of this subsection apply to ILECs choosing to introduce new services and exercise pricing and packaging flexibility including customer promotional offerings through informational notice filings.

(1) **Notice requirements.**

(A) An ILEC shall provide the informational notice in compliance with this section to the commission, to the Office of Public Utility Counsel (OPC), and to any person who holds a certificate of operating authority in the ILEC's certificated area or areas, or who has an effective interconnection agreement with the ILEC.

(B) Unless an interconnection agreement contract specifies otherwise, an incumbent local exchange carrier shall continue to provide to affected resellers of retail services the same notice of rate changes or withdrawal of detariffed services that it was required to provide prior to detariffing.

(2) **Filing requirements.**

(A) Filing of informational notice and confidential information. At the time the informational notice is filed in Central Records, a copy of the informational notice, including confidential information, shall be delivered to OPC. In addition to the record copy, an additional copy of any confidential information shall be filed in Central Records for use by the commission staff.

(i) The commission shall assign each informational notice a unique control number and shall stamp the tariff sheets "received."

(ii) The commission staff shall file any notice of deficiencies (including deficiencies in LRIC studies submitted) for incomplete filings not in compliance with this section or pleading alleging that the service offering is inappropriately filed as an informational notice filing within three working days after the date of the filing of the informational notice.

(iii) Within two working days after the date of the commission staff's filing, the applicant shall file an explanation of the actions it has taken or intends to take in response to a notice or pleading filed under clause (ii) of this subparagraph.

(B) Effective date. A service offering shall be effective no earlier than ten days after the ILEC files a complete informational notice with the commission.

(C) Access to confidential information. Access to confidential information filed with the commission as part of an informational notice filing shall be available to commission staff and OPC, upon execution of a commission approved protective agreement, at the time the informational notice is filed.

(D) Format of filing. An informational notice under this section must include the following elements:

(i) name of company;

(ii) PURA chapter under which company operates;

(iii) date of submission;

(iv) effective date;

(v) new and/or revised tariff pages, written in plain language and conforming to the requirements of §26.207 of this title (relating to Form and Filing of Tariffs);

(vi) proposed implementation date (if different from effective date);

(vii) affidavit of notice to the Office of Public Utility Counsel, certificate of operating authority holders, and parties to interconnection agreements;

(viii) type of filing (new service; pricing flexibility; packaging, or promotional offering; customer specific contract);

(ix) except for customer promotional offerings, relevant LRIC study or LRIC study reference, and relevant support materials (confidential/proprietary/protected materials provided to commission only). When LRIC studies for which

commission approval has not been obtained are provided with an informational notice filing, an application for approval of that LRIC study must be filed pursuant to the standards in §26.214 of this title to establish a LRIC floor and shall be filed before or simultaneously with the informational notice filing. The ILEC shall file a notice of intent to file LRIC studies pursuant to §26.214 of this title no later than ten days before the filing of the LRIC study;

(x) except for customer promotional offerings, relevant LRIC study or LRIC study reference, and relevant supporting materials (confidential/proprietary/protected materials provided to commission only), if an ILEC chooses to adopt LRIC studies of a larger company pursuant to the requirements of subsection (c)(3) or (d)(4) of this section, as applicable;

(xi) except for customer promotional offerings, relevant tariff rates or specific tariff references, if the ILEC chooses to adopt rates of a larger company pursuant to requirements of subsection (c)(4) or (d)(5) of this section, as applicable;

(xii) a response of "yes", "no", or "not applicable", with explanatory language, to the following question: "Is the sum of the TELRIC-based wholesale prices of components needed for provision of the retail service at or below the retail price set forth in this filing?" Except for customer promotional offerings, if the response is "yes" or "no", the filing must identify the components needed for the provision of the retail service, along with a list of relevant wholesale and retail prices;

(xiii) a response of "yes" or "no" to the following question: "Is the service available for resale by a competitor?" If the answer is "no", does the proposed price meet the standards set forth in §26.274 (f) - (h) of this title (relating to Imputation)? For purposes of this question, "available for resale" means:

(I) the service is not subject to tariffed resale restrictions; and

(II) the ILEC is not aware of any constraints that would prevent a competitor from functionally provisioning the service to the competitor's customers in parity with the ILEC's provisioning of the service to the ILEC's customers;

(xiv) for package offerings that combine regulated products or services with unregulated products or services and/or with the products or services of an ILEC's affiliate, an affidavit indicating that the price of the package recovers the cost to the ILEC of acquiring and providing the unregulated products or services or the affiliate's products or services. The affidavit shall also indicate that the cost to the ILEC of acquiring and providing an affiliate's products or services is greater than or equal to the cost to the affiliate of acquiring and/or providing the products or services. The cost to an ILEC of acquiring or providing the affiliate's products or services shall be valued in a manner consistent with FCC requirements, to the extent FCC requirements are applicable to the ILEC, and with subsection (d)(2)(F) of this section. For a joint marketing effort that includes regulated products or services and the products or services of an affiliate, an affidavit shall be provided by each affected affiliate attesting that the affiliate's costs are recovered in a manner consistent with subsection (d)(2)(F) of this section and FCC requirements, to the extent FCC requirements are applicable to the ILEC;

(xv) description of the offering's terms and conditions, including location of service or a statement that it is to be provided state-wide; and

(xvi) a privacy concerns statement.

(E) For customer promotional offerings:

(i) Affidavit that a promotion for this service has not exceeded 90 days for the previous 12-month period.

(ii) Promotional tariff or letter identifying the promotional service and whether it is for a waiver of installation or service order charges, or both (90 days) or a discount of 25% or less (60 days).

(3) **Disputes as to sufficiency or appropriateness of informational notice filing.**

(A) If the ILEC advises the commission by written filing that a dispute exists with respect to a notice of deficiency or the inappropriateness of an informational notice, and requests the assignment of an administrative law judge to resolve the dispute, the commission will consider the dispute to be a contested case.

(B) A contested case will also exist if the commission files a complaint addressing sufficiency or appropriateness of an informational notice filing.

(C) Parties other than the commission staff may not challenge the sufficiency of an informational notice filing.

(4) **Complaints regarding service offerings introduced by informational notice filings.**

(A) Subject to subparagraph (E) of this paragraph, an affected person, the OPC, or the commission may file a complaint at the commission on or after the date the informational notice has been filed. The filing of a complaint will initiate a contested case.

(B) A complaint addressing an informational notice involving pricing flexibility, including customer promotions, may challenge whether the filing is in compliance with PURA and the commission substantive rules.

(C) A complaint addressing an informational notice involving a new service may challenge whether the tariff is in compliance with the pricing standards of PURA and commission substantive rules. If the complaint is finally resolved in a final order issued by the commission in favor of the complainant, the ILEC shall either:

(i) not later than the tenth day after the date the complaint is finally resolved, amend the price of the service as necessary to comply with the final resolution; or

(ii) discontinue the service.

(D) The commission shall dismiss a complaint filed prior to the filing of an informational notice on the grounds that the commission lacks jurisdiction to hear the complaint.

(E) The commission shall consider any complaint alleging that the pricing of a regulated service does not meet the pricing standards of PURA and commission substantive rules, which is filed 31 or more days after the implementation date of the tariff, to be untimely.

(F) All complaints shall be docketed and governed by the commission's procedural rules and shall be filed and reviewed pursuant to the following requirements:

(i) Complaints shall be captioned: COMPLAINT BY {NAME OF COMPLAINANT} REGARDING TARIFF CONTROL NUMBER(S) {NUMBER(S)} {STYLE OF TARIFF CONTROL NUMBER}.

(ii) Processing. The commission shall assign each complaint filed with respect to an informational notice a unique control number. The presiding officer shall cause a copy of each complaint, bearing the assigned control number, to be filed in the relevant tariff control number(s) for the related informational notice(s).

(G) The commission staff shall have standing in all proceedings related to informational notice filings before the commission and may intervene by filing a notice of intervention at any time prior to determination on the merits. No motion is necessary for such intervention.

(H) A complaint filed pursuant to this section shall be considered to be an exception to the informal resolution requirements of procedural rule §22.242(c) of this title (relating to Complaints).

(5) **Interim relief.** All tariffs introduced by informational notice filings will remain in effect during the pendency of any complaint unless interim relief suspending the tariff is granted pursuant to this subsection.

(A) Any request that a tariff be suspended during the pendency of a complaint must meet the following requirements:

(i) the pleading must state an appropriate and bona fide cause of action;

(ii) the pleading must be verified or supported with affidavits based on personal knowledge; and

(iii) the pleading must set forth the following elements: probable right of recovery, probable and irreparable injury in the interim, and no adequate alternative remedy.

(B) The presiding officer shall schedule a hearing on interim relief in the form of suspension of a tariff on an expedited basis.

(C) The burden of proof shall be upon the complainant with respect to each element of proof necessary to obtain any interim relief requested by the complainant.

§26.229. Requirements Applicable to Chapter 59 Electing Companies.

(a) **Application**. This section applies to electing companies, as defined in the Public Utility Regulatory Act (PURA) §59.002(1).

(b) **Purpose.** The purpose of this section is to establish the substantive and procedural requirements for an electing company that chooses to provide an informational notice to introduce new services and/or to exercise pricing and packaging flexibility, including customer promotional offerings, and for complaints regarding service offerings introduced by informational notice offerings.

(c) **New services.** The term "new services" has the meaning assigned in §26.5 of this title (relating to Definitions) and shall include services for which no rate was in effect on September 1, 1999. An electing company may file an informational notice to introduce a new service. An electing company filing an informational notice pursuant to this subsection shall file the appropriate information in accordance with subsection (g)(2) of this section.

(1) **Pricing standards.**

(A) An electing company shall price each new service at or above the service's long run incremental cost (LRIC).

(B) The price of a new service may not be preferential, prejudicial, discriminatory, predatory, or anticompetitive.

(C) A price that is set at or above the service's LRIC is presumed not to be predatory.

(2) **LRIC studies.** An electing company may establish a service's LRIC by submitting a LRIC study, as specified in subsection (g)(2)(D)(ix) of this section, that conforms to the requirements of §26.214 of this title (relating to Long Run Incremental Cost (LRIC) Methodology for Services Provided by Certain Incumbent Local Exchange Companies (ILECs)).

(3) **LRIC adoption.** An electing company serving fewer than one million access lines in Texas may establish a service's LRIC by adopting the commission-approved cost studies of a larger company for the same service.

(4) **Rate adoption.** In lieu of filing a LRIC study or adopting the LRIC studies of a larger company, an electing company with less than one million access lines may adopt a rate that is identical to or higher than a larger company's tariffed rate for the same service.

(5) **Packaging of new services.** If an electing company offers a new service as a component of a package, the electing company shall also offer the new service as a separately tariffed service.

(d) **Pricing and packaging flexibility.** An electing company may file an informational notice to exercise pricing and packaging flexibility by filing the appropriate information in accordance with subsection (g)(2) of this section.

(1) **General requirements.**

(A) Pricing flexibility includes:

(i) customer specific contracts;

(ii) packaging of services;

(iii) volume, term, and discount pricing;

(iv) zone density pricing, with a zone defined as an exchange; and

(v) other promotional pricing.

(B) A discount or other form of pricing flexibility may not be preferential, prejudicial, discriminatory, predatory, or anticompetitive.

(C) An electing company may exercise pricing flexibility, including the packaging or joint marketing of any regulated service with any other regulated or unregulated service or any service of an affiliate.

(2) **Pricing standards.**

(A) An electing company shall price each regulated service offered separately or as part of a package at either the service's tariffed rate or at a rate not lower than the service's LRIC.

(B) An electing company shall price each service at or above the service's LRIC.

(C) A price that is set at or above the service's LRIC is presumed not to be predatory.

(D) The price of a package that combines regulated products or services with unregulated products or services shall recover the cost to the electing company of acquiring and providing the unregulated products or services. In this section, unregulated products or services are products or services provided by an entity that is unaffiliated with the electing company.

(E) The price of a package that combines regulated products or services with the products or services of an affiliate shall recover the cost to the electing company of acquiring and providing its affiliate's products or services, which shall be greater than or equal to the cost to the affiliate of acquiring and/or providing the products or services. The cost to an electing company of acquiring or providing the affiliate's products or services shall be valued in a manner consistent with Federal Communications Commission (FCC) requirements, to the extent such requirements are applicable to the electing company, and with subparagraph (F) of this paragraph. A group of products or services that are jointly marketed by an electing company in conjunction with one or more of its affiliates shall be priced in a manner consistent with FCC requirements, to the extent such requirements are applicable to the electing company, and with subparagraph (F) of this paragraph.

(F) Consistent with PURA §52.051(1)(C), an electing company shall not use revenues from regulated monopoly services to subsidize services subject to competition.

(3) **LRIC studies.** An electing company may establish a service's LRIC by submitting a LRIC study, as specified in subsection (g)(2)(D)(ix) of this section, that conforms to the requirements of §26.214 of this title.

(4) **LRIC adoption.** An electing company serving fewer than one million access lines in Texas may establish a service's LRIC by adopting the commission-approved cost studies of a larger company for the same services.

(5) **Rate adoption.** In lieu of filing a LRIC study or adopting the LRIC studies of a larger company, an electing company with less than one million access lines may adopt a rate that is identical to or higher than a larger company's tariffed rate for the same service.

(e) **Customer promotional offerings.** An electing company may file an informational notice to offer customer promotional offerings by filing the appropriate information in accordance with subsection (g)(2) of this section.

(1) An electing company may offer a promotion for a regulated service for not more than 90 days in any 12-month period.

(2) Customer promotional offerings may consist of:

(A) a waiver of installation charges or service order charges, or both, for not more than 90 days in a 12-month period; or

(B) a temporary discount of not more than 25% from the tariffed rate for not more than 60 days in a 12-month period.

(3) Although electing companies are not required to file LRIC studies with informational notices regarding these customer promotional offerings, the offerings are subject to the standards for pricing flexibility in subsection (d) of this section, in the event of a complaint.

(f) **Requirements for customer specific contracts.** An electing company may enter into customer-specific contracts for certain services as provided in §26.211 of this title (relating to Rate-Setting Flexibility for

Services Subject to Significant Competitive Challenges). For all services not addressed in §26.211 of this title, an electing company must offer customer specific contracts pursuant to this section.

(g) **Procedures related to the filing of informational notices and associated tariffs.** The provisions of this subsection apply to electing companies choosing to introduce new services and exercise pricing and packaging flexibility including customer promotional offerings through informational notice filings.

(1) **Notice requirements.**

(A) An electing company shall provide the informational notice in compliance with this section to the commission, to the Office of Public Utility Counsel (OPC), and to any person who holds a certificate of operating authority in the electing company's certificated area or areas, or who has an effective interconnection agreement with the electing company.

(B) Unless an interconnection agreement contract specifies otherwise, an incumbent local exchange carrier shall continue to provide to affected resellers of retail services the same notice of rate changes or withdrawal of detariffed services that it was required to provide prior to detariffing.

(2) **Filing requirements.**

(A) Filing of informational notice and confidential information. At the time the informational notice is filed in Central Records, a copy of the informational notice, including confidential information, shall be delivered to OPC. In addition to the record copy, an additional copy of any confidential information shall be filed in Central Records for use by the commission staff.

(i) The commission shall assign each informational notice a unique control number and shall stamp the tariff sheets "received".

(ii) The commission staff shall file any notice of deficiencies (including deficiencies in LRIC studies submitted) for incomplete filings not in compliance with this section or pleading alleging that the service offering is inappropriately filed as an informational notice filing within three working days after the date of the filing of the informational notice.

(iii) Within two working days after the date of the commission staff's filing, the applicant shall file an explanation of the actions it has taken or intends to take in response to a notice or pleading filed under clause (ii) of this subparagraph.

(B) Effective date. A service offering shall be effective no earlier than ten days after the electing company files a complete informational notice with the commission.

(C) Access to confidential information. Access to confidential information filed with the commission as part of an informational notice filing shall be available to commission staff and OPC, upon execution of a commission approved protective agreement, at the time the informational notice is filed.

(D) Format of filing. An informational notice under this section must include the following elements:

(i) name of company;

(ii) PURA chapter under which company operates;

(iii) date of submission;

(iv) effective date;

(v) new and/or revised tariff pages, written in plain language and conforming to the requirements of §26.207 of this title (relating to Form and Filing of Tariffs);

(vi) proposed implementation date (if different from effective date);

(vii) affidavit of notice to the Office of Public Utility Counsel, certificate of operating authority holders, and parties to interconnection agreements;

(viii) type of filing (new service; pricing flexibility; packaging, or promotional offering; customer specific contract);

(ix) except for customer promotional offerings, relevant LRIC study or LRIC study reference, and relevant support materials (confidential/proprietary/protected materials provided to commission only). When LRIC studies for which commission approval has not been obtained are provided with an informational notice filing, an application for approval of that LRIC study must be filed pursuant to the standards in §26.214 of this title to establish a LRIC floor and shall be filed before or simultaneously with the informational notice filing. The electing company shall file a notice of intent to file LRIC studies pursuant to §26.214 of this title no later than ten days before the filing of the LRIC study;

(x) except for customer promotional offerings, relevant LRIC study or LRIC study reference, and relevant supporting materials (confidential/proprietary/protected materials provided to commission only), if an electing company chooses to adopt LRIC studies of a larger company pursuant to the requirements of subsection (c)(3) or (d)(4) of this section, as applicable;

(xi) except for customer promotional offerings, relevant tariff rates or specific tariff references, if the electing company chooses to adopt rates of a larger company pursuant to requirements of subsection (c)(4) or (d)(5) of this section, as applicable;

(xii) a response of “yes”, “no”, or “not applicable”, with explanatory language, to the following question: “Is the sum of the TELRIC-based wholesale prices of components needed for provision of the retail service at or below the retail price set forth in this filing?” Except for customer promotional offerings, if the response is “yes” or “no”, the filing must identify the components needed for the provision of the retail service, along with a list of relevant wholesale and retail prices;

(xiii) a response of “yes” or “no” to the following question: “Is the service available for resale by a competitor?” If the answer is “no”, does the proposed price meet the standards set forth in §26.274 (f) - (h) of this title (relating to Imputation)? For purposes of this question, “available for resale” means:

(I) the service is not subject to tariffed resale restrictions; and

(II) the electing company is not aware of any constraints that would prevent a competitor from functionally provisioning the service to the competitor’s customers in parity with the electing company’s provisioning of the service to the electing company’s customers; providing the products or services. The cost to an electing company of acquiring or providing the affiliate’s products or services shall be valued in a manner consistent with FCC requirements, to the extent FCC requirements are applicable to the electing company, and with subsection (d)(2)(F) of this section. For a joint marketing effort that includes regulated products or services and the products or services of an affiliate, an affidavit shall be provided by each affected affiliate attesting that the affiliate’s costs are recovered in a manner consistent with subsection (d)(2)(F) of this section and FCC requirements, to the extent FCC requirements are applicable to the electing company;

(xiv) for package offerings that combine regulated products or services with unregulated products or services and/or with the products or services of an electing company’s affiliate, an affidavit indicating that the price of the package recovers the cost to the electing company of acquiring and providing the

unregulated products or services or the affiliate's products or services. The affidavit shall also indicate that the cost to the electing company of acquiring and providing an affiliate's products or services is greater than or equal to the cost to the affiliate of acquiring and/or providing the products or services. The cost to an electing company of acquiring or providing the affiliate's products or services shall be valued in a manner consistent with FCC requirements, to the extent FCC requirements are applicable to the electing company, and with subsection (d)(2)(F) of this section. For a joint marketing effort that includes regulated products or services and the products or services of an affiliate, an affidavit shall be provided by each affected affiliate attesting that the affiliate's costs are recovered in a manner consistent with subsection (d)(2)(F) of this section and FCC requirements, to the extent FCC requirements are applicable to the electing company;

(xv) description of the offering's terms and conditions, including location of service or a statement that it is to be provided state-wide; and

(xvi) a privacy concerns statement.

(E) For customer promotional offerings:

(i) Affidavit that a promotion for this service has not exceeded 90 days for the previous 12-month period.

(ii) Promotional tariff or letter identifying the promotional service and whether it is for a waiver of installation or service order charges, or both (90 days) or a discount of 25% or less (60 days).

(3) **Disputes as to sufficiency or appropriateness of informational notice filing.**

(A) If the electing company advises the commission by written filing that a dispute exists with respect to a notice of deficiency or the inappropriateness of an informational notice, and requests the assignment of an administrative law judge to resolve the dispute, the commission will consider the dispute to be a contested case.

(B) A contested case will also exist if the commission files a complaint addressing sufficiency or appropriateness of an informational notice filing.

(C) Parties other than the commission staff may not challenge the sufficiency of an informational notice filing.

(4) **Complaints regarding service offerings introduced by informational notice filings.**

(A) Subject to subparagraph (E) of this paragraph, an affected person, the OPC, or the commission may file a complaint at the commission on or after the date the informational notice has been filed. The filing of a complaint will initiate a contested case.

(B) A complaint addressing an informational notice involving pricing flexibility, including customer promotions, may challenge whether the filing is in compliance with PURA and the commission substantive rules.

(C) A complaint addressing an informational notice involving a new service may challenge whether the tariff is in compliance with the pricing standards of PURA and commission substantive rules. If the complaint is finally resolved in a final order issued by the commission in favor of the complainant, the electing company shall either:

(i) not later than the tenth day after the date the complaint is finally resolved, amend the price of the service as necessary to comply with the final resolution; or

(ii) discontinue the service.

(D) The commission shall dismiss a complaint filed prior to the filing of an informational notice on the grounds that the commission lacks jurisdiction to hear the complaint.

(E) The commission shall consider any complaint alleging that the pricing of a regulated service does not meet the pricing standards of PURA and commission substantive rules, which is filed 31 or more days after the implementation date of the tariff, to be untimely.

(F) All complaints shall be docketed and governed by the commission's procedural rules and shall be filed and reviewed pursuant to the following requirements:

(i) Complaints shall be captioned: COMPLAINT BY {NAME OF COMPLAINANT} REGARDING TARIFF CONTROL NUMBER(S) {NUMBER(S)} {STYLE OF TARIFF CONTROL NUMBER}.

(ii) Processing. The commission shall assign each complaint filed with respect to an informational notice a unique control number. The presiding officer shall cause a copy of each complaint, bearing the assigned control number, to be filed in the relevant tariff control number(s) for the related informational notice(s).

(G) The commission staff shall have standing in all proceedings related to informational notice filings before the commission, and may intervene by filing a notice of intervention at any time prior to determination on the merits. No motion is necessary for such intervention.

(H) A complaint filed pursuant to this section shall be considered to be an exception to the informal resolution requirements of procedural rule §22.242(c) of this title (relating to Complaints).

(5) **Interim relief.** All tariffs introduced by informational notice filings will remain in effect during the pendency of any complaint unless interim relief suspending the tariff is granted pursuant to this subsection.

(A) Any request that a tariff be suspended during the pendency of a complaint must meet the following requirements:

(i) the pleading must state an appropriate and bona fide cause of action;

(ii) the pleading must be verified or supported with affidavits based on personal knowledge; and

(iii) the pleading must set forth the following elements: probable right of recovery, probable and irreparable injury in the interim, and no adequate alternative remedy.

(B) The presiding officer shall schedule a hearing on interim relief in the form of suspension of a tariff on an expedited basis.

(C) The burden of proof shall be upon the complainant with respect to each element of proof necessary to obtain any interim relief requested by the complainant.

(h) A telecommunications provider that is not subject to rate-of-return regulation under PURA, Chapter 53:

(1) may, but is not required to, maintain on file with the commission tariffs, price lists, or customer service agreements in relation to services that are not subject to regulation without commission approval;

(2) may make changes in its tariffs, price lists, and customer service agreements in relation to services that are not subject to regulation without commission approval; and

(3) may cross-reference its federal tariff in its state tariff if its intrastate switched access rates are the same as its interstate switched access rates.

(i) A telecommunications provider may withdraw a tariff, price list, or customer service agreement not required to be filed or maintained with the commission under this section if the provider:

(1) files written notice of the withdrawal with the commission; and

(2) notifies its customers of the withdrawal and posts the current tariffs, price lists, or generic customer service agreements on its Internet website.

§26.230. Requirements Applicable to Chapter 65 One-day Informational Notice Filings.

(a) **Application**. This section applies to incumbent local exchange companies (ILECs), as defined in the Public Utility Regulatory Act (PURA) §51.002(3), with markets deregulated pursuant to PURA Chapter 65 who choose to offer services through one-day informational notice filings pursuant to PURA §§65.151-65.153. Except as provided in subsection (i) of this section, a transitioning company, as defined in PURA §65.002(5), which does not choose to offer services through a one-day informational notice filing must either offer services through ten-day informational notice filings pursuant to §§26.227-26.229 of this title (relating to Costs, Rates and Tariffs) or through filings pursuant to §§26.207-26.211 of this title (relating to Costs, Rates and Tariffs).

(b) **Purpose.** The purpose of this section is to establish the requirements for a transitioning ILEC that chooses to provide an informational notice to introduce new services, and/or to exercise pricing flexibility for basic and non-basic retail telecommunications services, and to outline the procedures for processing complaints regarding service offerings introduced by such informational notice filings.

(c) **Pricing standards.**

(1) In a market that remains regulated, the transitioning ILEC shall price its retail services in accordance with the provisions as set forth in §§26.224-26.226 of this title (relating to Costs, Rates and Tariffs).

(2) In a deregulated market, the transitioning ILEC shall price its retail services as follows:

(A) for all services, other than residential service, at a price equal to or higher than the service's long run incremental costs (LRIC); and

(B) for basic local telecommunications service, at any price higher than the lesser of the service's LRIC or the tariffed price on the date the market was deregulated.

(3) Notwithstanding any other long-run incremental cost filing requirements in this subchapter, a transitioning company, upon written notice to the commission, is not required to comply with a direct or indirect requirement to price a residential service at, above, or according to the long-run incremental cost of the service or to otherwise use long-run incremental cost in establishing prices for residential services or to file with the commission a long-run incremental cost study for any service. .

(4) Notwithstanding paragraphs (2) and (3) of this subsection, a transitioning company may not:

(A) establish a retail rate, term, or condition that is anticompetitive or unreasonably preferential, prejudicial, or discriminatory;

(B) establish a retail rate for a basic or non-basic service in a deregulated market that is subsidized either directly or indirectly by a basic or non-basic service provided in an exchange that is not deregulated; or

(C) engage in predatory pricing or attempt to engage in predatory pricing. A rate or price for a basic local telecommunications service is not anticompetitive, predatory, or unreasonably preferential, prejudicial, or discriminatory if the rate or price is equal to or greater than the rate or price in the transitioning company's tariff, or price list, for that service in effect on the date the transitioning company submits notice to the commission under paragraph (3) of this subsection.

(5) In each deregulated market, a transitioning company shall make available to all residential customers throughout that market the same price, terms, and conditions for all basic and non-basic retail telecommunications services, consistent with any pricing flexibility available to the company on or before August 31, 2005.

(6) A rate that meets the pricing requirements of paragraph (2) of this subsection is deemed compliant with paragraph (4)(B) of this subsection.

(7) A transitioning company may offer to an individual residential customer a promotional offer that is not available uniformly throughout the market if the company makes the offer through a medium other than direct mail or mass electronic media and the offer is intended to retain or obtain a customer.

(d) **Procedures related to the filing of one-day informational notices and associated tariffs.** The provisions of this subsection apply to ILECs choosing to introduce new services and/or exercise pricing and packaging flexibility through one-day informational notice filings.

(1) **Notice requirements.**

(A) A transitioning ILEC shall provide notice of an impending informational notice filing to the commission, the Office of Public Utility Counsel (OPC), and to any person who holds a certificate of operating authority in the transitioning ILEC's certificated area or areas, or who has an effective interconnection agreement with the transitioning ILEC. Such notice shall inform the recipient of the nature and material terms of the impending filing.

(B) Unless an interconnection agreement contract specifies otherwise, an incumbent local exchange carrier shall continue to provide to affected resellers of retail services the same notice of rate changes or withdrawal of detariffed services that it was required to provide prior to detariffing.

(2) **Filing requirements.**

(A) **Filing of informational notice and confidential information.** At the time the informational notice is filed in Central Records, a copy of the informational notice shall be delivered to OPC. Copies of confidential information shall be filed in Central Records in accordance with §22.71(d) of this title (relating to Filings of Pleadings, Documents and Other Materials).

(B) **Format of filing.** An informational notice under this section must include the same elements as set forth in §26.227(c)(2)(D) of this title (relating to Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58 Electing Companies) and the following:

(i) For retail services offered in regulated markets, the transitioning company must demonstrate that the rates, terms, and conditions comply with the requirements of subsection (c)(1) of this section and affirm that the said rates, terms and conditions comply with requirements in subsection (c)(4) of this section.

(ii) For retail services offered in deregulated markets, the transitioning company must demonstrate that the rates, terms, and conditions comply with requirements in subsection (c)(2), and (4)-(7) of this section.

(C) **Access to confidential information.** Access to confidential information filed with the commission as part of an informational notice filing shall be available to commission staff and OPC, upon execution of a commission approved protective agreement.

(D) **Effective date.** A transitioning ILEC's service offering shall be effective one day after the transitioning ILEC files an informational notice with the commission.

(e) **Notice of deficiencies and disputes as to sufficiency or appropriateness of one-day informational notice filings.**

(1) The commission staff may file a notice of deficiency for incomplete filings or non-compliant filings or a pleading alleging that the service offering is inappropriately filed as a one-day informational notice.

(2) Within five working days after the date of the commission staff's filing, an applicant shall file an explanation of the actions it has taken or intends to take in response to the notice or pleading filed under paragraph (1) of this subsection.

(3) Disputes as to sufficiency or appropriateness of one-day informational notice filings shall be subject to the provisions of §26.227(d) of this title.

(f) **Complaints.**

(1) An affected person may file a complaint at the commission challenging whether a transitioning company is complying with subsection (c) of this section.

(2) Notwithstanding subsection (c)(3) of this section, the commission may require a transitioning company to submit a long-run incremental cost study for a business service that is the subject of a complaint submitted under paragraph (1) of this subsection.

(g) A telecommunications provider that is not subject to rate-of-return regulation under PURA, Chapter 53:

(1) may, but is not required to, maintain on file with the commission tariffs, price lists, or customer service agreements governing the terms of providing service ;

(2) may make changes in its tariffs, price lists, and customer service agreements in relation to services that are not subject to regulation without commission approval; and

(3) may cross-reference its federal tariff in its state tariff if the provider's intrastate switched access rates are the same as the provider's interstate switched access rates.

(h) A telecommunications provider may withdraw a tariff, price list, or customer service agreement not required to be filed or maintained with the commission under this section if the provider:

(1) files written notice of the withdrawal with the commission; and

(2) notifies its customers of the withdrawal and posts the current tariffs, price lists, or generic customer service agreements on its Internet website.

(i) A deregulated company or a transitioning company is not required to obtain advance approval for a filing with the commission or a posting on the company's Internet website that adds, modifies, withdraws, or grandfathers:

(1) a nonbasic retail service or the service's rates, terms or conditions; or

(2) for a market that has been deregulated, a basic network service or the service's rates, terms or conditions.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter L. WHOLESALE MARKET PROVISIONS

§26.271. Expanded Interconnection.

(a) **Applicability.** Unless the context clearly indicates otherwise, the provisions relating to expanded interconnection for special access and/or private line services in this section apply to each carrier that is dominant with respect to special access services and that has interstate tariffs in effect that provide for expanded interconnection for special access services. Similarly, unless the context clearly indicates otherwise, the provisions relating to expanded interconnection for switched transport services in this section apply to each carrier that is dominant with respect to switched transport services and that has interstate tariffs in effect that provide for expanded interconnection for switched transport services. A carrier that is dominant with respect to local exchange telephone service is, by definition, also dominant with respect to switched transport services.

(b) **Expanded interconnection for special access and private line services.**

(1) Expanded interconnection for DS1 and DS3 special access services, and special access services for which interstate expanded interconnection has been granted. Each dominant carrier that is subject to this section shall offer expanded interconnection as specified in this subsection for the services listed in subparagraphs (A) - (C) of this paragraph. The dominant carrier shall offer expanded interconnection for these services at the same locations, in the same manner, and, except for price, under the same terms and conditions as it offers expanded interconnection for interstate special access services, unless ordered otherwise by the commission. This paragraph applies to the following intrastate special access services:

(A) special access DS1;

(B) special access DS3; and

(C) special access services for which interstate expanded interconnection has been granted.

(2) **Expanded interconnection for all special access and private line services.** Each dominant carrier that is subject to this section shall offer expanded interconnection as specified in this subsection for the services listed in subparagraphs (A) - (B) of this paragraph. The dominant carrier shall offer expanded interconnection for these services at the same locations, in the same manner, and, except for price, under the same terms and conditions as it offers expanded interconnection for interstate special access services, unless ordered otherwise by the commission. This paragraph applies to the following intrastate services:

(A) all private line services, as that term is defined in §26.5 of this title (relating to Definitions); and

(B) all special access services.

(3) **Tariff provisions.**

(A) Each dominant carrier that is subject to this section shall file tariff revisions to unbundle each service for which expanded interconnection shall be offered and to remove any resale or sharing restrictions for each such service. As used in this subparagraph, to unbundle means to make available, on an unrestricted basis, the individual rate elements necessary to provide a special access service or a private line service.

(B) Each dominant carrier that is subject to this section shall file tariffs to establish connection charges for the use of equipment and facilities that are associated with offerings of expanded interconnection under this subsection. Unless ordered otherwise by the commission, the definitions of such connection charges and the regulations governing their application shall be the same as those contained in the carrier's interstate expanded interconnection tariffs. The dominant carrier shall not impose a separate charge or rate element that is not included in its interstate tariffs for interconnection for special access services. The dominant carrier shall not impose a separate charge or rate element for interconnection for private line services that is not included in its tariffs for interconnection for special access services.

(4) **Implementation.** All dominant carriers subject to this section shall file tariff amendments in compliance with paragraph (3) of this subsection.

(A) Initial filing to implement paragraph (1) of this subsection. A dominant carrier shall file initial tariff amendments to implement the provisions of paragraph (1) of this subsection within 60 days of being declared a dominant carrier.

(B) **Initial filing to implement paragraph (2) of this subsection.** A dominant carrier shall file initial tariff amendments to implement the provisions of paragraph (2) of this subsection within 60 days of being declared a dominant carrier.

(C) **Initial filings in compliance with this subsection shall be filed pursuant to §23.26 of this title (relating to New and Experimental Services).** Initial tariff amendments filed in compliance with this subsection shall be filed pursuant to §23.26; provided, however, the provisions of §23.26(c)(6) shall not apply with respect to rates proposed in compliance with paragraph (3)(A) or (B) of this subsection if the dominant carrier proposes rates that are the same as the rates in effect for the carrier's interstate provision of the same, equivalent or substitutable service. Tariff revisions filed pursuant to this subsection shall not be combined in a single application with any other tariff revision.

(D) **Additional filings.** A dominant carrier shall make, within 15 days of the effective date of an interstate tariff providing for expanded interconnection, such additional tariff filings as are required to remain in compliance with this subsection. The proposed effective date of such additional tariff filings shall be not later than 60 days after the filing date, unless suspended.

(5) **Customer specific contracts.** This subsection does not require the unbundling or removal of resale prohibitions in customer specific contracts in effect on or before February 22, 1994.

(c) **Expanded interconnection for switched transport services.**

(1) **Expanded interconnection for all switched transport services.** Each dominant carrier that is subject to this section shall offer expanded interconnection as specified in this subsection for all switched transport services at the same locations, in the same manner, and except for price, under the same terms and conditions as it offers expanded interconnection for interstate switched transport services, unless ordered otherwise by the commission.

(2) **Tariff provisions and implementation.** Each dominant carrier that is subject to this section shall file tariffs to establish connection charges for the use of equipment and facilities that are associated with offerings of expanded interconnection under this subsection.

(A) Unless ordered otherwise by the commission, the definitions of such connection charges and the regulations governing their application shall be the same as those contained in the carrier's interstate expanded interconnection tariffs.

(B) Absent additional costs, the dominant carrier shall impose a single charge when the same facilities are used to provide expanded interconnection for both special access and switched transport services. If additional facilities are used, the dominant carrier may assess additional cost-based connection charge subelements for the use of such additional facilities.

(C) The dominant carrier shall not impose a separate charge or rate element that is not included in its interstate tariffs for interconnection for switched transport services.

(D) A dominant carrier shall apply nonrecurring reconfiguration charges in a neutral manner to customers of either the interconnector or dominant carrier unless justified by specific identifiable cost differences. In addition, any differences between the charges applicable when a customer shifts to an interconnector's service and those applicable when a customer reconfigures its service with the dominant carrier must be cost-based.

(E) A dominant carrier shall file initial tariffs to implement the provisions of this subsection within 60 days of being declared a dominant carrier.

(F) Initial tariff filings in compliance with this subsection shall be filed pursuant to the provisions of §23.26; provided, however the provisions of §23.26(c)(6) shall not apply with respect to

rates proposed in compliance with subparagraph (A) - (E) of this paragraph if the dominant carrier proposes rates that are the same as the rates in effect for the carrier's interstate provision of the same, equivalent or substitutable service. Tariff revisions filed pursuant to this subsection shall not be combined in a single application with any other tariff revision.

(G) A dominant carrier shall make, within 15 days of the effective date of an interstate tariff providing for expanded interconnection, such additional tariff filings as are required to remain in compliance with this subsection. The proposed effective date for such additional tariff filings shall be not later than 60 days after the filing date, unless suspended.

(d) **Waivers.** A dominant carrier may seek a waiver from the requirements of subsections (b) and (c) of this section at a location where the opportunity for the application of an Federal Communications Commission (FCC) waiver does not exist. The request shall be granted if the presiding officer of the commission finds that the dominant carrier has demonstrated that it is not feasible to provide interconnection at a specific location due to lack of space.

(e) **Voluntary agreements.** A dominant carrier and one or more interconnectors may agree to alternative interconnection arrangements at a specific location that are different from those required by subsections (b) and/or (c) of this section, provided such arrangements are tariffed and made generally available for that location. Any such agreement shall not modify the dominant carrier's obligations under subsections (b) and (c) with respect to any other interconnector that does not elect to subscribe to the voluntary arrangement.

(f) **Bona fide requests.** If a dominant carrier would be required to provide expanded interconnection for interstate special access or switched transport services at a particular location upon receipt of a bona fide request for such interstate interconnection, the dominant carrier shall provide interconnection for intrastate services as required by subsections (b) and (c) of this section upon receipt of a bona fide request for such intrastate interconnection at any location not covered by its interstate tariffs, subject only to the same conditions and exceptions that would be applicable to a bona fide request for interconnection for interstate services.

(g) **Utilization of collocation space.** A dominant carrier shall permit an interconnector to use the same collocation space for both interstate and intrastate interconnection services.

(h) **Utilization of facilities.** A dominant carrier shall permit an interconnector to use the same facilities for both interstate and intrastate switched access traffic.

(i) **Reciprocal expanded interconnection.** An incumbent local exchange carrier is required to provide expanded interconnection to another local exchange carrier pursuant to the requirements of subsections (b) and (c) of this section only if the second local exchange carrier agrees to provide expanded interconnection, in a like manner, to the incumbent local exchange carrier.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter L. WHOLESALE MARKET PROVISIONS

§26.272. Interconnection.

(a) **Purpose.** The purpose of this section is to ensure that all providers of telecommunications services which are certificated to provide local exchange service, basic local telecommunications service, or switched access service within the state interconnect and maintain interoperable networks such that the benefits of local exchange competition are realized as envisioned under the provisions of the Public Utility Regulatory Act (PURA). The commission finds that interconnection is necessary to achieve competition in the local exchange market and is, therefore, in the public interest.

(b) **Definition.** The term "customer" when used in this section, shall mean an end-user customer.

(c) **Application and Exceptions.**

(1) **Application**. This section applies to all certificated telecommunications utilities (CTUs) providing local exchange service.

(2) **Exceptions.** Except as herein provided, all CTUs providing local exchange service must comply with the requirements of this section.

(A) Holders of a service provider certificate of operating authority (SPCOA).

(i) The holder of an SPCOA that does not provide dial tone and only resells the telephone services of another CTU shall be subject only to the requirements of subsection (e)(1)(B)(ii) and (D)(i)-(vii) of this section and subsection (i)(1)-(3) of this section.

(ii) The underlying CTU providing service to the holder of an SPCOA referenced in clause (i) of this subparagraph shall comply with the requirements of this section with respect to the customers of the SPCOA holder.

(B) Small incumbent local exchange companies (ILECs).

(i) This section shall apply to small ILECs to the extent required by 47 United States Code §251(f) (1996).

(ii) Notwithstanding the requirement in clause (i) of this subparagraph, small ILECs shall terminate traffic of a CTU which originates and terminates within the small ILEC's extended local calling service (ELCS) or extended area service (EAS) calling scope, where the small ILEC has an ELCS or EAS arrangement with another DCTU. The termination of this traffic shall be at rates, terms, and conditions as described in subsection (d)(4)(A) of this section.

(C) Rural telephone companies.

(i) This section shall also apply to rural telephone companies as defined in 47 United States Code §153 (1996) to the extent required by 47 United States Code §251(f) (1996).

(ii) Rural telephone companies shall terminate traffic of a CTU which originates and terminates within the rural telephone company's ELCS or EAS calling scope, where the rural telephone company has an ELCS or EAS arrangement with another DCTU. The termination of this traffic shall be at rates, terms, and conditions as described in subsection (d)(4)(A) of this section.

(D) Small CTUs.

(i) A small CTU may petition for a suspension or modification of the application of this section pursuant to 47 United States Code §251(f)(2) (1996).

(ii) Small CTUs shall terminate traffic of a CTU which originates and terminates within the small CTU's ELCS or EAS calling scope, where the small CTU has an ELCS or EAS arrangement with another DCTU. The termination of this traffic shall be at rates, terms, and conditions as described in subsection (d)(4)(A) of this section.

(E) Deregulated companies and nondominant telecommunications utilities.
Subsection (i)(2) and (3) of this section does not apply to deregulated companies holding a certificate of operating authority or to exempt carriers under PURA §52.154.

(d) **Principles of interconnection.**

(1) **General principles.**

(A) Interconnection between CTUs shall be established in a manner that is seamless, interoperable, technically and economically efficient, and transparent to the customer.

(B) Interconnection between CTUs shall utilize nationally accepted telecommunications industry standards and/or mutually acceptable standards for construction, operation, testing and maintenance of networks, such that the integrity of the networks is not impaired.

(C) A CTU may not unreasonably:

(i) discriminate against another CTU by refusing access to the local exchange;

(ii) refuse or delay interconnections to another CTU;

(iii) degrade the quality of access provided to another CTU;

(iv) impair the speed, quality, or efficiency of lines used by another CTU;

(v) fail to fully disclose in a timely manner, on request, all available information necessary for the design of equipment that will meet the specifications of the local exchange network; or

(vi) refuse or delay access by any person to another CTU.

(D) Interconnecting CTUs shall negotiate rates, terms, and conditions for facilities, services, or any other interconnection arrangements required pursuant to this section.

(E) This section should not be construed to allow an interconnecting CTU access to another CTU's network proprietary information or customer proprietary network information, customer-specific as defined in §26.5 of this title (relating to Definitions) unless otherwise permitted in this section.

(2) Technical interconnection principles. Interconnecting CTUs shall make a good-faith effort to accommodate each other's technical requests, provided that the technical requests are consistent with national industry standards and are in compliance with §26.52 of this title (relating to Emergency Operations), §26.53 of this title (relating to Inspections and Tests), §26.54 of this title (relating to Service Objectives and Performance Benchmarks), §26.55 of this title (relating to Monitoring of Service), §26.57 of this title (relating to Requirements for a Certificate Holder's Use of an Alternate Technology to Meet its Provider of Last Resort Obligation), §26.89 of this title (relating to Information Regarding Rates and Services of Nondominant Carriers), §26.107 of this title (relating to Registration of Interexchange Carriers (IXCs), Prepaid Calling Services Companies (PPC), and Other Nondominant Telecommunications Carriers), §26.128 of this title (relating to Telephone Directories), §26.206 of this title (relating to Depreciation Rates), and implementation of the requests would not cause unreasonable inefficiencies, unreasonable costs, or other detriment to the network of the CTU receiving the requests.

(A) Interconnecting CTUs shall ensure that customers of CTUs shall not have to dial additional digits or incur dialing delays that exceed industry standards in order to complete local calls as a result of interconnection.

(B) Interconnecting CTUs shall provide each other non-discriminatory access to signaling systems, databases, facilities, and information as required to ensure interoperability of networks and efficient, timely provision of services to customers.

(C) Interconnecting CTUs shall provide each other Common Channel Signaling System Seven (SS7) connectivity where technically available.

(D) Interconnecting CTUs shall be permitted a minimum of one point of interconnection in each exchange area or group of contiguous exchange areas within a single local access

and transport area (LATA), as requested by the interconnecting CTU, and may negotiate with the other CTU for additional interconnection points. Interconnecting CTUs shall agree to construct and/or lease and maintain the facilities necessary to connect their networks, either by having one CTU provide the entire facility or by sharing the construction and maintenance of the facilities necessary to connect their networks. The financial responsibility for construction and maintenance of such facilities shall be borne by the party who constructs and maintains the facility, unless the parties involved agree to other financial arrangements. Each interconnecting CTU shall be responsible for delivering its originating traffic to the mutually-agreed-upon point of interconnection or points of interconnection. Nothing herein precludes a CTU from recovering the costs of construction and maintenance of facilities if such facilities are used by other CTUs.

(E) Interconnecting CTUs shall establish joint procedures for troubleshooting the portions of their networks that are jointly used. Each CTU shall be responsible for maintaining and monitoring its own network such that the overall integrity of the interconnected network is maintained with service quality that is consistent with industry standards and is in compliance with §26.53 of this title.

(F) If a CTU has sufficient facilities in place, it shall provide intermediate transport arrangements between other interconnecting CTUs, upon request. A CTU providing intermediate transport shall not negotiate termination on behalf of another CTU, unless the terminating CTU agrees to such an arrangement. Upon request, DCTUs within major metropolitan areas will contact other CTUs and arrange meetings, within 15 days of such request, in an effort to facilitate negotiations and provide a forum for discussion of network efficiencies and inter-company billing arrangements.

(G) Each interconnecting CTU shall be responsible for ensuring that traffic is properly routed to the connected CTU and jurisdictionally identified by percent usage factors or in a manner agreed upon by the interconnecting CTUs.

(H) Interconnecting CTUs shall allow each other non-discriminatory access to all facility rights-of-way, conduits, pole attachments, building entrance facilities, and other pathways, provided that the requesting CTU has obtained all required authorizations from the property owner and/or appropriate governmental authority.

(I) Interconnecting CTUs shall provide each other physical interconnection in a non-discriminatory manner. Physical collocation for the transmission of local exchange traffic shall be provided to a CTU upon request, unless the CTU from which collocation is sought demonstrates that technical or space limitations make physical collocation impractical. Virtual collocation for the transmission of local exchange traffic shall be implemented at the option of the CTU requesting the interconnection.

(J) Each interconnecting CTU shall be responsible for contacting the North American Numbering Plan (NANP) administrator for its own NXX codes and for initiating NXX assignment requests.

(3) **Principles regarding billing arrangements.**

(A) Interconnecting CTUs shall cooperatively provide each other with both answer and disconnect supervision as well as accurate and timely exchange of information on billing records to facilitate billing to customers, to determine intercompany settlements for local and non-local traffic, and to validate the jurisdictional nature of traffic, as necessary. Such billing records shall be provided in accordance with national industry standards. For billing interexchange carriers for jointly provided switched access services, such billing records shall include meet point billing records, interexchange carrier (IXC) billing name, IXC billing address, and Carrier Identification Codes (CICs). If exchange of CIC codes is not technically feasible, interconnecting CTUs shall negotiate a mutually

acceptable settlement process for billing IXCs for jointly provided switched access services.

(B) CTUs shall enter into mutual billing and collection arrangements that are comparable to those existing between and/or among DCTUs, to ensure acceptance of each other's non-proprietary calling cards and operator-assisted calls.

(C) Upon a customer's selection of a CTU for his or her local exchange service, that CTU shall provide notification to the primary IXC through the Customer Account Record Exchange (CARE) database, or comparable means if CARE is unavailable, of all information necessary for billing that customer. At a minimum, this information should include the name and contact person for the new CTU and the customer's name, telephone number, and billing number. In the event a customer's local exchange service is disconnected at the option of the customer or the CTU, the disconnecting CTU shall provide notification to the primary IXC of such disconnection.

(D) All CTUs shall cooperate with IXCs to ensure that customers are properly billed for IXC services.

(4) **Principles regarding interconnection rates, terms, and conditions.**

(A) Criteria for setting interconnection rates, terms, and conditions. Interconnection rates, terms, and conditions shall not be unreasonably preferential, discriminatory, or prejudicial, and shall be non-discriminatory. The following criteria shall be used to establish interconnection rates, terms, and conditions.

(i) Local traffic of a CTU which originates and terminates within the mandatory single or multiexchange local calling area available under the basic local exchange rate of a single DCTU shall be terminated by the CTU at local interconnection rates. The local interconnection rates under this clause also apply with respect to mandatory EAS traffic originated and terminated within the local calling area of a DCTU if such traffic is between exchanges served by that single DCTU.

(ii) If a non-dominant certificated telecommunications utility (NCTU) offers, on a mandatory basis, the same minimum ELCS calling scope that a DCTU offers under its ELCS arrangement, a NCTU shall receive arrangements for its ELCS traffic that are not less favorable than the DCTU provides for terminating mandatory ELCS traffic.

(iii) With respect to local traffic originated and terminated within the local calling area of a DCTU but between exchanges of two or more DCTUs governed by mandatory EAS arrangements, DCTUs shall terminate local traffic of NCTUs at rates, terms, and conditions that are not less favorable than those between DCTUs for similar mandatory EAS traffic for the affected area. A NCTU and a DCTU may agree to terms and conditions that are different from those that exist between DCTUs for similar mandatory EAS traffic. The rates applicable to the NCTU for such traffic shall reflect the difference in costs to the DCTU caused by the different terms and conditions.

(iv) With respect to traffic that originates and terminates within an optional flat rate calling area, whether between exchanges of one DCTU or between exchanges of two or more DCTUs, DCTUs shall terminate such traffic of NCTUs at rates, terms, and conditions that are not less favorable than those between DCTUs for similar traffic. A NCTU and a DCTU may agree to terms and conditions that are different from those that exist between DCTUs for similar optional EAS traffic. The rates applicable to the NCTU for such traffic shall reflect the difference in costs to the DCTU caused by the different terms and conditions.

(v) A DCTU with more than one million access lines and a NCTU shall negotiate new EAS arrangements in accordance with the following requirements.

(I) For traffic between an exchange and a contiguous metropolitan exchange local calling area, as defined in §26.5 of this title, the DCTU shall negotiate with a NCTU for termination of such traffic if the NCTU includes such traffic as part of its customers' local calling area. These interconnection arrangements shall be not less favorable than the arrangements between DCTUs for similar EAS traffic.

(II) For traffic that does not originate or terminate within a metropolitan exchange local calling area, the DCTU shall negotiate with a NCTU for the termination of traffic between the contiguous service areas of the DCTU and the NCTU if the NCTU includes such traffic as part of its customers' local calling area and such traffic originates in an exchange served by the DCTU. These interconnection arrangements shall be not less favorable than the arrangements between DCTUs for similar EAS traffic.

(III) A NCTU shall have the same obligation to negotiate similar EAS interconnection arrangements with respect to traffic between its service area and a contiguous exchange of the DCTU if the DCTU includes such traffic as part of its customers' local calling area.

(vi) NCTUs are not precluded from establishing their own local calling areas or prices for purposes of retail telephone service offerings.

(B) Establishment of rates, terms, and conditions.

(i) CTUs involved in interconnection negotiations shall ensure that all reasonable negotiation opportunities are completed prior to the termination of the first commercial call. The date upon which the first commercial call between CTUs is terminated signifies the beginning of a nine-month period in which each CTU shall reciprocally terminate the other CTU's traffic at no charge, in the absence of mutually negotiated interconnection rates. Reciprocal interconnection rates, terms, and conditions shall be established pursuant to the compulsory arbitration process in subsection (g) of this section. In establishing these initial rates and three years from termination of the first commercial call, no cost studies shall be required from a new CTU.

(ii) An ILEC may adopt the tariffed interconnection rates approved for a larger ILEC or interconnection rates of a larger ILEC resulting from negotiations without providing the commission any additional cost justification for the adopted rates. If an ILEC adopts the tariffed interconnection rates approved for a larger ILEC, it shall file tariffs referencing the appropriate larger ILEC's rates. If an ILEC adopts the interconnection rates of a larger ILEC, the new CTU may adopt those rates as its own rates by filing tariffs referencing the appropriate larger ILEC's rates. If an ILEC chooses to file its own interconnection tariff, the new CTU must also file its own interconnection tariff.

(C) Public disclosure of interconnection rates, terms, and conditions. Interconnection rates, terms, and/or conditions shall be made publicly available as provided in subsection (h) of this section.

(e) **Minimum interconnection arrangements.**

(1) Pursuant to mutual agreements, interconnecting CTUs shall provide each other non-discriminatory access to ancillary services such as repair services, E9-1-1, operator services, white pages

telephone directory listing, publication and distribution, and directory assistance. The following minimum terms and conditions shall apply:

(A) Repair services. For purposes of this section, a CTU shall be required to provide repair services for its own facilities regardless of whether such facilities are used by the CTU for retail purposes, or provided by the CTU for resale purposes, or whether the facilities are ordered by another CTU for purposes of collocation.

(B) E-9-1-1 services. E-9-1-1 services include automatic number identification (ANI), ANI and automatic location identification (ALI) selective routing, and/or any combination of 9-1-1 features required by the 9-1-1 administrative entity or entities responsible for the geographic area involved.

(i) As a prerequisite to providing local exchange telephone service to any customer or any other service whereby a customer may dial 9-1-1 and thereafter, a CTU must meet the following requirements.

(I) The CTU is responsible for ordering the dedicated 9-1-1 trunk groups necessary to provide E9-1-1 service as approved by the appropriate 9-1-1 administrative entity or entities in the relevant 9-1-1 service agreement(s), and subject to the written process for documenting "unnecessary dedicated 9-1-1 trunks" in clause (vi)(I) of this subparagraph. Connection with the appropriate CTU in the provision of 9-1-1 service may be either directly or indirectly in a manner approved by the appropriate 9-1-1 administrative entity or entities.

(II) The CTU is responsible for enabling all its customers to dial the three digits 9,1,1 to access 9-1-1 service.

(III) The CTU is responsible for providing the ANI to the appropriate CTU operating the 'E911 selective routers, 9-1-1 tandems, IP-based 9-1-1 systems, NG9-1-1 systems, or appropriate PSAPs, as applicable. The ANI must include both the NPA or numbering plan digit (NPD), a component of the traditional 9-1-1 signaling protocol that identifies 1 of 4 possible NPAs, as appropriate, and the local telephone number of the 9-1-1 calling customer that can be used to successfully complete a return call to the customer.

(IV) The CTU is responsible for routing a 9-1-1 customer call, as well as interconnecting traffic on its network, to the appropriate E911 selective routers, 9-1-1 tandems, IP-based 9-1-1 systems, NG9-1-1 systems, or PSAPs , as applicable, based on the ANI and/or ALI. The appropriate 9-1-1 administrative entity or entities or the 9-1-1 network services provider, as applicable, shall provide specifications to the CTU for routing purposes.

(V) The CTU is responsible for providing the ALI for each of its customers. The ALI shall consist of the calling customer name, physical location, appropriate emergency service providers, and other similar standard ALI location data specified by the appropriate 9-1-1 administrative entity. For purposes of this subclause, other similar standard ALI data does not include supplemental data not part of the standard ALI location record.

(ii) Each CTU shall timely provide to the appropriate 911 administrative entity and the appropriate 9-1-1 database management services provider accurate and timely current information for all published, unpublished (nonpublished), and unlisted (nonlisted) information associated with its customers for the purposes of emergency or E-911 services.

(I) For purposes of this clause, a CTU timely provides the information if, within 24 hours of receipt, it delivers the information to the appropriate 9-1-1 database management services provider, or if the CTU is the appropriate 9-1-1 database management services provider, it places the information in the 9-1-1 database.

(II) For purposes of this clause, the information sent by a CTU to the 9-1-1 database management services provider and the information used by the 9-1-1 database management services provider shall be maintained in a fashion to ensure that it is accurate at a percentage as close to 100% as possible. "Accurate" means a record that correctly routes a 9-1-1 call and provides correct location information relating to the origination of such call. "Percentage" means the total number of accurate records in that database divided by the total number of records in that database. In determining the accuracy of records, a CTU shall not be held responsible for erroneous information provided to it by a customer or another CTU.

(III) Interconnecting CTUs shall execute confidentiality agreements with each other, as necessary, to prevent the unauthorized disclosure of unpublished/unlisted numbers. Interconnecting CTUs shall be allowed access to the ALI database or its equivalent by the appropriate 9-1-1 database management services provider for verification purposes. The appropriate 9-1-1 administrative entity shall provide non-discriminatory access to the master street address guide.

(iii) Each CTU is responsible for developing a 9-1-1 disaster recovery service restoration plan with input from the appropriate 9-1-1 administrative entities. This plan shall identify the actions to be taken in the event of a network-based 9-1-1 service failure. The goal of such actions shall be the efficient and timely restoration of 9-1-1 service. Each CTU shall notify the appropriate 9-1-1 administrative entity or entities of any changes in the CTU's network-based services and other services that may require changes to the plan.

(iv) Interconnecting CTUs shall provide each other and the appropriate 9-1-1 administrative entity or entities notification of scheduled outages for direct dedicated 9-1-1 trunks at least 48 hours prior to such outages. In the event of unscheduled outages for direct dedicated 9-1-1 trunks, interconnecting CTUs shall provide each other and the appropriate 9-1-1 administrative entity or entities immediate notification of such outages.

(v) Each NCTU's rates for 9-1-1 service to a public safety answering point shall be presumed to be reasonable if they do not exceed the rates charged by the ILEC for similar service.

(vi) Unless otherwise determined by the commission, nothing in this rule, any interconnection agreement, or any commercial agreement may be interpreted to supersede the appropriate 9-1-1 administrative entity's authority to migrate to newer functionally equivalent IP-based 9-1-1 systems or NG9-1-1 systems or the 9-1-1 administrative entity's authority to require the removal of unnecessary direct dedicated 9-1-1 trunks, circuits, databases, or functions.

(I) For purposes of this clause, "unnecessary direct dedicated 9-1-1 trunks" means those dedicated 9-1-1 trunks that generally would be part of a local interconnection arrangement but for: the CTU's warrant in writing that the direct dedicated 9-1-1 trunks are unnecessary and all 9-1-1 traffic from the CTU will be accommodated by another 9-1-1 service

arrangement that has been approved by the appropriate 9-1-1 administrative entity or entities; and written approval from the appropriate 9-1-1 entity or entities accepting the CTU's warrant. A 9-1-1 network services provider or CTU presented with such written documentation from the CTU and the appropriate 9-1-1 administrative entity or entities shall rely on the warrant of the CTU and the appropriate 9-1-1 entities.

(II) Subclause (I) of this clause is intended to promote and ensure collaboration so that 9-1-1 service architecture and provisioning modernization can proceed expeditiously for the benefit of improvements in the delivery of 9-1-1 emergency services. Subclause (I) of this clause is not intended to require or authorize a 9-1-1 administrative entity's rate center service plan specifications or a 9-1-1 network architecture deviation that causes new, material cost shifting between telecommunications providers or between telecommunications providers and 9-1-1 administrative entities. Examples of such a deviation would be points of interconnection different from current LATA configurations and requiring provisioning of the 9-1-1 network with a similar type deviation that may involve new material burdens on competition or the public interest.

(C) Operator services. Interconnecting CTUs shall negotiate to ensure the interoperability of operator services between networks, including but not limited to the ability of operators on each network to perform such operator functions as reverse billing, line verification, call screening, and call interrupt.

(D) White pages telephone directory and directory assistance. Interconnecting CTUs shall negotiate to ensure provision of white pages telephone directory and directory assistance services.

(i) The telephone numbers and other appropriate information of the customers of NCTUs shall be included on a non-discriminatory basis in the DCTU's white pages directory associated with the geographic area covered by the white pages telephone directory published by the DCTUs. Similarly, any white pages telephone directory provided by a NCTU to its customers shall have corresponding DCTU listings available on a non-discriminatory basis. The entries of NCTU customers in the DCTU white pages telephone directory shall be interspersed in correct alphabetical sequence among the entries of the DCTU customers and shall be no different in style, size, or format than the entries of the DCTU customers, unless requested otherwise by the NCTU. The CTU or its affiliate publishing a white pages telephone directory on behalf of the CTU shall not directly charge the customer of another CTU located in the geographic areas covered by the white pages telephone directory for white pages listings or directory.

(ii) Listings of all customers located within the local calling area of a NCTU, but not located within the local calling area of the DCTU publishing the white pages telephone directory, shall be included in a separate section of the DCTU's white pages telephone directory at the option of the NCTU.

(iii) CTUs shall provide directory listings and related updates to the CTU or its affiliate publishing a white pages telephone directory on behalf of the CTU or to any CTU providing directory assistance, in a timely manner to ensure inclusion

in the annual white page listings and provision of directory assistance service that complies with §26.128 of this title. The CTU or its affiliate publishing a white pages telephone directory on behalf of the CTU shall be responsible for providing all other CTUs with timely information regarding deadlines associated with its published white pages telephone directory.

(iv) CTUs shall, upon request, provide accurate and current subscriber listings (name, address, telephone number) and updates in a readily usable format and in a timely manner, on a non-discriminatory basis, to publishers of yellow pages telephone directory. CTUs shall not provide listings of subscribers desiring non-listed status for publication purposes.

(v) White pages telephone directories shall be distributed to all customers located within the geographic area covered by the white pages telephone directory on non-discriminatory terms and conditions by the CTU or its affiliate publishing the white pages telephone directory.

(vi) A CTU or its affiliate that publishes a white pages telephone directory on behalf of the CTU shall provide a single page per CTU in the information section of the white pages telephone directory, for the CTU to convey critical customer contact information regarding emergency services, billing and service information, repair services and other pertinent information. The CTU's pages shall be arranged in alphabetical order. Additional access to the information section of the white pages telephone directory shall be subject to negotiations.

(vii) CTUs must provide information that identifies customers desiring non-listed and/or non-published telephone numbers and/or non-published addresses to the CTU or its affiliate publishing a white pages telephone directory on behalf of the CTU and to the CTU maintaining the directory assistance database. The CTU or its affiliate publishing a white pages telephone directory on behalf of the CTU shall not divulge such non-listed and/or non-published telephone numbers or addresses and the CTU maintaining the directory assistance database shall not divulge such non-published telephone numbers or addresses.

(viii) CTUs shall provide each other non-discriminatory access to directory assistance databases.

(2) At a minimum, interconnecting CTUs shall negotiate to ensure the following:

(A) Non-discriminatory access to databases such as 800 and Line Information Data Base (LIDB) where technically feasible, to ensure interoperability between networks and the efficient, timely provision of service to customers;

(B) non-discriminatory access to Telecommunications Relay Service;

(C) Common Channel Signaling interconnection including transmission of privacy indicator where technically available;

(D) non-discriminatory access to all signaling protocols and all elements of signaling protocols used in routing local and interexchange traffic, including signaling protocols used to query call processing databases, where technically feasible;

(E) number portability and the inclusion of the NCTU's NXX code(s) in the Local Exchange Routing Guide and related systems;

(F) non-discriminatory handling, including billing, of mass announcement/audiotext calls including, but not limited to, 900 and 976 calls;

(G) provision of intercept services for a specific telephone number in the event a customer discontinues service with one CTU, initiates service with another CTU, and the customer's telephone number changes;

(H) cooperative engineering, operations, maintenance and billing practices and procedures; and

(I) non-discriminatory access to Advanced Intelligent Network (AIN), where technically available.

(f) **Negotiations.**

(1) CTUs and other negotiating parties shall engage in good-faith negotiations and cooperative planning as necessary to achieve mutually agreeable interconnection arrangements.

(2) Before terminating its first commercial telephone call, each CTU requesting interconnection shall negotiate with each CTU or other negotiating party that is necessary to complete all telephone calls, including local service calls and EAS or ELCS calls, made by or placed to the customers of the requesting CTU. Upon request, DCTUs within major metropolitan calling areas will contact other CTUs and arrange meetings, within 15 days of such request, in an effort to facilitate negotiations and provide a forum for discussions of network efficiencies and intercompany billing arrangements.

(3) Unless the negotiating parties establish a mutually agreeable date, negotiations are deemed to begin on the date when the CTU or other negotiating party from which interconnection is being requested receives the request for interconnection from the CTU seeking interconnection. The request shall:

(A) be in writing and hand-delivered; sent by certified mail or by facsimile;

(B) identify the initial specific issues to be resolved, the specific underlying facts, and the requesting CTU's proposed resolution of each issue;

(C) provide any other material necessary to support the request, included as appendices; and

(D) provide the identity of the person authorized to negotiate for the requesting CTU.

(4) The requesting CTU may identify additional issues for negotiation without causing an alteration of the date on which negotiations are deemed to begin.

(5) The CTU or negotiating party from which interconnection is sought shall respond to the interconnection request no later than 14 working days from the date the request is received. The response shall:

(A) be in writing and hand-delivered; sent by certified mail or by facsimile;

(B) respond specifically to the requesting party's proposed resolution of each initial issue identified by the requesting party, identify the specific underlying facts upon which the response is based and, if the response is not in agreement with the requesting party's proposed resolution of each issue, the responding party's proposed resolution of each issue;

(C) provide any other material necessary to support the response, included as appendices; and

(D) provide the identity of the person authorized to negotiate for the responding party.

(6) At any point during the negotiations required under this subsection, any CTU or negotiating party may request the commission designee(s) to participate in the negotiations and to mediate any differences arising in the course of the negotiation.

(7) Interconnecting CTUs may, by written agreement, accelerate the requirements of this subsection with respect to a particular interconnection agreement except that the requirements of subsection (g)(1)(A) of this section shall not be accelerated.

(8) Any disputes arising under or pertaining to negotiated interconnection agreements may be resolved pursuant to Chapter 21, Subchapter E, of this title (relating to Post-Interconnection Agreement Dispute Resolution).

(g) **Compulsory arbitration process.**

(1) A negotiating CTU that is unable to reach mutually agreeable terms, rates, and/or conditions for interconnection with any CTU or negotiating party may petition the commission to arbitrate any unresolved issues. In order to initiate the arbitration procedure, a negotiating CTU:

(A) shall file its petition with the commission during the period from the 135th to the 160th day (inclusive) after the date on which its request for negotiation under subsection (f) of this section was received by the other CTU involved in the negotiation;

(B) shall provide the identity of each CTU and/or negotiating party with which agreement cannot be reached but whose cooperation is necessary to complete all telephone calls made by or placed to the customers of the requesting CTU;

(C) shall provide all relevant documentation concerning the unresolved issues;

(D) shall provide all relevant documentation concerning the position of each of the negotiating parties with respect to those issues;

(E) shall provide all relevant documentation concerning any other issue discussed and resolved by the negotiating parties; and

(F) shall send a copy of the petition and any documentation to the CTU or negotiating party with which agreement cannot be reached, not later than the day on which the commission receives the petition.

(2) A non-petitioning party to a negotiation under subsection (f) of this section may respond to the other party's petition and provide such additional information as it wishes within 25 days after the commission receives the petition.

(3) The compulsory arbitration process shall be completed not later than nine months after the date on which a CTU receives a request for interconnection under subsection (f) of this section.

(4) Any disputes arising under or pertaining to arbitrated interconnection agreements may be resolved pursuant to Chapter 21, Subchapter E of this title.

(h) **Filing of rates, terms, and conditions.**

(1) Rates, terms and conditions resulting from negotiations, compulsory arbitration process, and statements of generally available terms.

(A) A CTU from which interconnection is requested shall file any agreement, adopted by negotiation or by compulsory arbitration, with the commission. The commission shall make such agreement available for public inspection and copying within ten days after the agreement is approved by the commission pursuant to subparagraphs (C) and (D) of this paragraph.

(B) An ILEC serving greater than five million access lines may prepare and file with the commission, a statement of terms and conditions that it generally offers within the state pursuant to 47 United States Code §252(f) (1996). The commission shall make such statement available for public inspection and copying within ten days after the statement is approved by the commission pursuant to subparagraph (E) of this paragraph.

(C) The commission shall reject an agreement (or any portion thereof) adopted by negotiation if it finds that:

(i) the agreement (or any portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or

(ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.

(D) The commission shall reject an agreement (or any portion thereof) adopted by compulsory arbitration, under subsection (g) of this section, pursuant to guidelines found in 47 United States Code §252(e)(2)(B) (1996).

(E) The commission shall review the statement of generally available terms filed under subparagraph (B) of this paragraph, pursuant to guidelines found in 47 United States Code §252(f) (1996). The submission or approval of a statement under this paragraph shall not relieve an ILEC serving greater than five million access lines of its duty to negotiate the terms and conditions of an agreement pursuant to 47 United States Code §251 (1996).

(2) **Rates, terms and/or conditions among DCTUs.** Within 15 days of a request from a CTU negotiating interconnection arrangements with a DCTU, a non-redacted version of any agreement reflecting the rates, terms, and conditions between and/or among DCTUs which relate to interconnection arrangements for similar traffic shall be disclosed to the CTU, subject to commission-approved non-disclosure or protective agreement. A non-redacted version of the same agreement shall be disclosed to commission staff at the same time if requested, subject to commission-approved non-disclosure or protective agreement.

(i) **Customer safeguards.**

(1) **Requirements for provision of service to customers.** Nothing in this section or in the CTU's tariffs shall be interpreted as precluding a customer of any CTU from purchasing local exchange service from more than one CTU at a time. No CTU shall connect, disconnect, or move any wiring or circuits on the customer's side of the demarcation point without the customer's express authorization as specified in §26.130 of this title, (relating to Selection of Telecommunications Utilities).

(2) **Requirements for CTUs ceasing operations.** In the event that a CTU ceases its operations, it is the responsibility of the CTU to notify the commission and all of the CTU's customers at least 61 working days in advance that their service will be terminated. The notification shall include a listing of all alternative service providers available to customers in the exchange and shall specify the date on which service will be terminated.

(3) **Requirements for service installations.** DCTUs that interconnect with NCTUs shall be responsible for meeting the installation of service requirements under §26.54 of this title in providing service to the NCTU. NCTUs shall make a good-faith effort to meet the requirements for installation in §26.54 of this title, and may negotiate with the DCTU to establish a procedure to meet this goal.

(A) For those customers for whom the NCTU provides dial tone but not the local loop, 95% of the NCTU's service orders shall be completed in no more than ten working days from request for service, unless a later date is agreed to by the customer.

(B) For those customers for whom the NCTU does not provide dial tone and resells the telephone services of a DCTU, 95% of the NCTU's service orders shall be completed in no more than seven working days from request for service, unless the customer agrees to a later date.

(C) For those customers where the NCTU uses facilities other than a DCTUs' resale facilities obtained through Public Utility Regulatory Act §60.041, the NCTU shall complete service orders within 30 calendar days from request of service, unless a later date is agreed to by the customer.

(D) The DCTU shall not discriminate between its customers and NCTUs if the DCTU is able to install service in less than the time permitted under §26.54 of this title.

(e) **Minimum interconnection arrangements.**

(1) Pursuant to mutual agreements, interconnecting CTUs shall provide each other non-discriminatory access to ancillary services such as repair services, E9-1-1, operator services, white pages telephone directory listing, publication and distribution, and directory assistance. The following minimum terms and conditions shall apply:

(A) Repair services. For purposes of this section, a CTU shall be required to provide repair services for its own facilities regardless of whether such facilities are used by the CTU for retail purposes, or provided by the CTU for resale purposes, or whether the facilities are ordered by another CTU for purposes of collocation.

(B) E-9-1-1 services. E-9-1-1 services include automatic number identification (ANI), ANI and automatic location identification (ALI) selective routing, and/or any combination of

9-1-1 features required by the 9-1-1 administrative entity or entities responsible for the geographic area involved.

(i) As a prerequisite to providing local exchange telephone service to any customer or any other service whereby a customer may dial 9-1-1 and thereafter, a CTU must meet the following requirements.

(I) The CTU is responsible for ordering the dedicated 9-1-1 trunk groups necessary to provide E9-1-1 service as approved by the appropriate 9-1-1 administrative entity or entities in the relevant 9-1-1 service agreement(s), and subject to the written process for documenting "unnecessary dedicated 9-1-1 trunks" in clause (vi)(I) of this subparagraph. Connection with the appropriate CTU in the provision of 9-1-1 service may be either directly or indirectly in a manner approved by the appropriate 9-1-1 administrative entity or entities.

(II) The CTU is responsible for enabling all its customers to dial the three digits 9,1,1 to access 9-1-1 service.

(III) The CTU is responsible for providing the ANI to the appropriate CTU operating the 'E911 selective routers, 9-1-1 tandems, IP-based 9-1-1 systems, NG9-1-1 systems, or appropriate PSAPs, as applicable. The ANI must include both the NPA or numbering plan digit (NPD)(a component of the traditional 9-1-1 signaling protocol that identifies 1 of 4 possible NPAs, as appropriate, and the local telephone number of the 9-1-1 calling customer that can be used to successfully complete a return call to the customer.

(IV) The CTU is responsible for routing a 9-1-1 customer call, as well as interconnecting traffic on its network, to the appropriate 'E911 selective routers, 9-1-1 tandems, IP-based 9-1-1 systems, NG9-1-1 systems, or PSAPs , as applicable, based on the ANI and/or ALI. The appropriate 9-1-1 administrative entity or entities or the 9-1-1 network services provider, as applicable, shall provide specifications to the CTU for routing purposes.

(V) The CTU is responsible for providing the ALI for each of its customers. The ALI shall consist of the calling customer name, physical location, appropriate emergency service providers, and other similar standard ALI location data specified by the appropriate 9-1-1 administrative entity. For purposes of this subclause, other similar standard ALI data does not include supplemental data not part of the standard ALI location record.

(ii) Each CTU shall timely provide to the appropriate 911 administrative entity and the appropriate 9-1-1 database management services provider accurate and timely current information for all published, unpublished (nonpublished), and unlisted (nonlisted) information associated with its customers for the purposes of emergency or E-911 services.

(I) For purposes of this clause, a CTU timely provides the information if, within 24 hours of receipt, it delivers the information to the appropriate 9-1-1 database management services provider, or if the CTU is the appropriate 9-1-1 database management services provider, it places the information in the 9-1-1 database.

(II) For purposes of this clause, the information sent by a CTU to the 9-1-1 database management services provider and the information used by the 9-1-1 database management services provider shall be maintained in a

fashion to ensure that it is accurate at a percentage as close to 100% as possible. "Accurate" means a record that correctly routes a 9-1-1 call and provides correct location information relating to the origination of such call. "Percentage" means the total number of accurate records in that database divided by the total number of records in that database. In determining the accuracy of records, a CTU shall not be held responsible for erroneous information provided to it by a customer or another CTU.

(III) Interconnecting CTUs shall execute confidentiality agreements with each other, as necessary, to prevent the unauthorized disclosure of unpublished/unlisted numbers. Interconnecting CTUs shall be allowed access to the ALI database or its equivalent by the appropriate 9-1-1 database management services provider for verification purposes. The appropriate 9-1-1 administrative entity shall provide non-discriminatory access to the master street address guide.

(iii) Each CTU is responsible for developing a 9-1-1 disaster recovery service restoration plan with input from the appropriate 9-1-1 administrative entities. This plan shall identify the actions to be taken in the event of a network-based 9-1-1 service failure. The goal of such actions shall be the efficient and timely restoration of 9-1-1 service. Each CTU shall notify the appropriate 9-1-1 administrative entity or entities of any changes in the CTU's network-based services and other services that may require changes to the plan.

(iv) Interconnecting CTUs shall provide each other and the appropriate 9-1-1 administrative entity or entities notification of scheduled outages for direct dedicated 9-1-1 trunks at least 48 hours prior to such outages. In the event of unscheduled outages for direct dedicated 9-1-1 trunks, interconnecting CTUs shall provide each other and the appropriate 9-1-1 administrative entity or entities immediate notification of such outages.

(v) Each NCTU's rates for 9-1-1 service to a public safety answering point shall be presumed to be reasonable if they do not exceed the rates charged by the ILEC for similar service.

(vi) Unless otherwise determined by the commission, nothing in this rule, any interconnection agreement, or any commercial agreement may be interpreted to supersede the appropriate 9-1-1 administrative entity's authority to migrate to newer functionally equivalent IP-based 9-1-1 systems or NG9-1-1 systems or the 9-1-1 administrative entity's authority to require the removal of unnecessary direct dedicated 9-1-1 trunks, circuits, databases, or functions.

(III) For purposes of this clause, "unnecessary direct dedicated 9-1-1 trunks" means those dedicated 9-1-1 trunks that generally would be part of a local interconnection arrangement but for: the CTU's warrant in writing that the direct dedicated 9-1-1 trunks are unnecessary and all 9-1-1 traffic from the CTU will be accommodated by another 9-1-1 service arrangement that has been approved by the appropriate 9-1-1 administrative entity or entities; and written approval from the appropriate 9-1-1 entity or entities accepting the CTU's warrant. A 9-1-1 network services provider or CTU presented with such written documentation from the CTU and the appropriate 9-1-1 administrative entity or entities shall rely on the warrant of the CTU and the appropriate 9-1-1 entities.

(IV) Subclause (I) of this clause is intended to promote and ensure collaboration so that 9-1-1 service architecture and provisioning modernization can proceed expeditiously for the benefit of improvements in the delivery of 9-1-1 emergency services. Subclause (I) of this clause is not intended to require or authorize a 9-1-1 administrative entity's rate center service plan specifications or a 9-1-1 network architecture deviation that causes new, material cost shifting between telecommunications providers or between telecommunications providers and 9-1-1 administrative entities. Examples of such a deviation would be points of interconnection different from current LATA configurations and requiring provisioning of the 9-1-1 network with a similar type deviation that may involve new material burdens on competition or the public interest.

(C) Operator services. Interconnecting CTUs shall negotiate to ensure the interoperability of operator services between networks, including but not limited to the ability of operators on each network to perform such operator functions as reverse billing, line verification, call screening, and call interrupt.

(D) White pages telephone directory and directory assistance. Interconnecting CTUs shall negotiate to ensure provision of white pages telephone directory and directory assistance services.

(i) The telephone numbers and other appropriate information of the customers of NCTUs shall be included on a non-discriminatory basis in the DCTU's white pages directory associated with the geographic area covered by the white pages telephone directory published by the DCTUs. Similarly, any white pages telephone directory provided by a NCTU to its customers shall have corresponding DCTU listings available on a non-discriminatory basis. The entries of NCTU customers in the DCTU white pages telephone directory shall be interspersed in correct alphabetical sequence among the entries of the DCTU customers and shall be no different in style, size, or format than the entries of the DCTU customers, unless requested otherwise by the NCTU. The CTU or its affiliate publishing a white pages telephone directory on behalf of the CTU shall not directly charge the customer of another CTU located in the geographic areas covered by the white pages telephone directory for white pages listings or directory.

(ii) Listings of all customers located within the local calling area of a NCTU, but not located within the local calling area of the DCTU publishing the white pages telephone directory, shall be included in a separate section of the DCTU's white pages telephone directory at the option of the NCTU.

(iii) CTUs shall provide directory listings and related updates to the CTU or its affiliate publishing a white pages telephone directory on behalf of the CTU or to any CTU providing directory assistance, in a timely manner to ensure inclusion in the annual white page listings and provision of directory assistance service that complies with §26.128 of this title. The CTU or its affiliate publishing a white pages telephone directory on behalf of the CTU shall be responsible for providing all other CTUs with timely information regarding deadlines associated with its published white pages telephone directory.

(iv) CTUs shall, upon request, provide accurate and current subscriber listings (name, address, telephone number) and updates in a readily usable format and in a timely manner, on a non-discriminatory basis, to publishers of yellow pages

telephone directory. CTUs shall not provide listings of subscribers desiring non-listed status for publication purposes.

(v) White pages telephone directories shall be distributed to all customers located within the geographic area covered by the white pages telephone directory on non-discriminatory terms and conditions by the CTU or its affiliate publishing the white pages telephone directory.

(vi) A CTU or its affiliate that publishes a white pages telephone directory on behalf of the CTU shall provide a single page per CTU in the information section of the white pages telephone directory, for the CTU to convey critical customer contact information regarding emergency services, billing and service information, repair services and other pertinent information. The CTU's pages shall be arranged in alphabetical order. Additional access to the information section of the white pages telephone directory shall be subject to negotiations.

(vii) CTUs must provide information that identifies customers desiring non-listed and/or non-published telephone numbers and/or non-published addresses to the CTU or its affiliate publishing a white pages telephone directory on behalf of the CTU and to the CTU maintaining the directory assistance database. The CTU or its affiliate publishing a white pages telephone directory on behalf of the CTU shall not divulge such non-listed and/or non-published telephone numbers or addresses and the CTU maintaining the directory assistance database shall not divulge such non-published telephone numbers or addresses.

(viii) CTUs shall provide each other non-discriminatory access to directory assistance databases.

(2) At a minimum, interconnecting CTUs shall negotiate to ensure the following:

(A) Non-discriminatory access to databases such as 800 and Line Information Data Base (LIDB) where technically feasible, to ensure interoperability between networks and the efficient, timely provision of service to customers;

(B) non-discriminatory access to Telecommunications Relay Service;

(C) Common Channel Signaling interconnection including transmission of privacy indicator where technically available;

(D) non-discriminatory access to all signaling protocols and all elements of signaling protocols used in routing local and interexchange traffic, including signaling protocols used to query call processing databases, where technically feasible;

(E) number portability and the inclusion of the NCTU's NXX code(s) in the Local Exchange Routing Guide and related systems;

(F) non-discriminatory handling, including billing, of mass announcement/audiotext calls including, but not limited to, 900 and 976 calls;

(G) provision of intercept services for a specific telephone number in the event a customer discontinues service with one CTU, initiates service with another CTU, and the customer's telephone number changes;

(H) cooperative engineering, operations, maintenance and billing practices and procedures; and

(I) non-discriminatory access to Advanced Intelligent Network (AIN), where technically available.

(f) **Negotiations.**

(1) CTUs and other negotiating parties shall engage in good-faith negotiations and cooperative planning as necessary to achieve mutually agreeable interconnection arrangements.

(2) Before terminating its first commercial telephone call, each CTU requesting interconnection shall negotiate with each CTU or other negotiating party that is necessary to complete all telephone

calls, including local service calls and EAS or ELCS calls, made by or placed to the customers of the requesting CTU. Upon request, DCTUs within major metropolitan calling areas will contact other CTUs and arrange meetings, within 15 days of such request, in an effort to facilitate negotiations and provide a forum for discussions of network efficiencies and intercompany billing arrangements.

(3) Unless the negotiating parties establish a mutually agreeable date, negotiations are deemed to begin on the date when the CTU or other negotiating party from which interconnection is being requested receives the request for interconnection from the CTU seeking interconnection. The request shall:

(A) be in writing and hand-delivered; sent by certified mail or by facsimile;

(B) identify the initial specific issues to be resolved, the specific underlying facts, and the requesting CTU's proposed resolution of each issue;

(C) provide any other material necessary to support the request, included as appendices; and

(D) provide the identity of the person authorized to negotiate for the requesting CTU.

(4) The requesting CTU may identify additional issues for negotiation without causing an alteration of the date on which negotiations are deemed to begin.

(5) The CTU or negotiating party from which interconnection is sought shall respond to the interconnection request no later than 14 working days from the date the request is received. The response shall:

(A) be in writing and hand-delivered; sent by certified mail or by facsimile;

(B) respond specifically to the requesting party's proposed resolution of each initial issue identified by the requesting party, identify the specific underlying facts upon which the response is based and, if the response is not in agreement with the requesting party's proposed resolution of each issue, the responding party's proposed resolution of each issue;

(C) provide any other material necessary to support the response, included as appendices; and

(D) provide the identity of the person authorized to negotiate for the responding party.

(6) At any point during the negotiations required under this subsection, any CTU or negotiating party may request the commission designee(s) to participate in the negotiations and to mediate any differences arising in the course of the negotiation.

(7) Interconnecting CTUs may, by written agreement, accelerate the requirements of this subsection with respect to a particular interconnection agreement except that the requirements of subsection (g)(1)(A) of this section shall not be accelerated.

(8) Any disputes arising under or pertaining to negotiated interconnection agreements may be resolved pursuant to Chapter 21, Subchapter E, of this title (relating to Post-Interconnection Agreement Dispute Resolution).

(g) **Compulsory arbitration process.**

(1) A negotiating CTU that is unable to reach mutually agreeable terms, rates, and/or conditions for interconnection with any CTU or negotiating party may petition the commission to arbitrate any unresolved issues. In order to initiate the arbitration procedure, a negotiating CTU:

(A) shall file its petition with the commission during the period from the 135th to the 160th day (inclusive) after the date on which its request for negotiation under subsection (f) of this section was received by the other CTU involved in the negotiation;

(B) shall provide the identity of each CTU and/or negotiating party with which agreement cannot be reached but whose cooperation is necessary to complete all telephone calls made by or placed to the customers of the requesting CTU;

(C) shall provide all relevant documentation concerning the unresolved issues;

(D) shall provide all relevant documentation concerning the position of each of the negotiating parties with respect to those issues;

(E) shall provide all relevant documentation concerning any other issue discussed and resolved by the negotiating parties; and

(F) shall send a copy of the petition and any documentation to the CTU or negotiating party with which agreement cannot be reached, not later than the day on which the commission receives the petition.

(2) A non-petitioning party to a negotiation under subsection (f) of this section may respond to the other party's petition and provide such additional information as it wishes within 25 days after the commission receives the petition.

(3) The compulsory arbitration process shall be completed not later than nine months after the date on which a CTU receives a request for interconnection under subsection (f) of this section.

(4) Any disputes arising under or pertaining to arbitrated interconnection agreements may be resolved pursuant to Chapter 21, Subchapter E of this title.

(h) **Filing of rates, terms, and conditions.**

(1) Rates, terms and conditions resulting from negotiations, compulsory arbitration process, and statements of generally available terms.

(A) A CTU from which interconnection is requested shall file any agreement, adopted by negotiation or by compulsory arbitration, with the commission. The commission shall make such agreement available for public inspection and copying within ten days after the agreement is approved by the commission pursuant to subparagraphs (C) and (D) of this paragraph.

(B) An ILEC serving greater than five million access lines may prepare and file with the commission, a statement of terms and conditions that it generally offers within the state pursuant to 47 United States Code §252(f) (1996). The commission shall make such statement available for public inspection and copying within ten days after the statement is approved by the commission pursuant to subparagraph (E) of this paragraph.

(C) The commission shall reject an agreement (or any portion thereof) adopted by negotiation if it finds that:

(i) the agreement (or any portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or

(ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.

(D) The commission shall reject an agreement (or any portion thereof) adopted by compulsory arbitration, under subsection (g) of this section, pursuant to guidelines found in 47 United States Code §252(e)(2)(B) (1996).

(E) The commission shall review the statement of generally available terms filed under subparagraph (B) of this paragraph, pursuant to guidelines found in 47 United States Code §252(f) (1996). The submission or approval of a statement under this paragraph shall not relieve an ILEC serving greater than five million access lines of its duty to negotiate the terms and conditions of an agreement pursuant to 47 United States Code §251 (1996).

(2) **Rates, terms and/or conditions among DCTUs.** Within 15 days of a request from a CTU negotiating interconnection arrangements with a DCTU, a non-redacted version of any agreement reflecting the rates, terms, and conditions between and/or among DCTUs which relate to interconnection arrangements for similar traffic shall be disclosed to the CTU, subject to commission-approved non-disclosure or protective agreement. A non-redacted version of the same agreement shall be disclosed to commission staff at the same time if requested, subject to commission-approved non-disclosure or protective agreement.

(i) **Customer safeguards.**

(1) **Requirements for provision of service to customers.** Nothing in this section or in the CTU's tariffs shall be interpreted as precluding a customer of any CTU from purchasing local exchange service from more than one CTU at a time. No CTU shall connect, disconnect, or move any wiring or circuits on the customer's side of the demarcation point without the customer's express authorization as specified in §26.130 of this title, (relating to Selection of Telecommunications Utilities).

(2) **Requirements for CTUs ceasing operations.** In the event that a CTU ceases its operations, it is the responsibility of the CTU to notify the commission and all of the CTU's customers at least 61 working days in advance that their service will be terminated. The notification shall include a listing of all alternative service providers available to customers in the exchange and shall specify the date on which service will be terminated.

(3) **Requirements for service installations.** DCTUs that interconnect with NCTUs shall be responsible for meeting the installation of service requirements under §26.54 of this title in providing service to the NCTU. NCTUs shall make a good-faith effort to meet the requirements for installation in §26.54 of this title, and may negotiate with the DCTU to establish a procedure to meet this goal.

(A) For those customers for whom the NCTU provides dial tone but not the local loop, 95% of the NCTU's service orders shall be completed in no more than ten working days from request for service, unless a later date is agreed to by the customer.

(B) For those customers for whom the NCTU does not provide dial tone and resells the telephone services of a DCTU, 95% of the NCTU's service orders shall be completed in no more than seven working days from request for service, unless the customer agrees to a later date.

(C) For those customers where the NCTU uses facilities other than a DCTUs' resale facilities obtained through Public Utility Regulatory Act §60.041, the NCTU shall complete service orders within 30 calendar days from request of service, unless a later date is agreed to by the customer.

(D) The DCTU shall not discriminate between its customers and NCTUs if the DCTU is able to install service in less than the time permitted under §26.54 of this title.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter L. WHOLESALE MARKET PROVISIONS

§26.274. Imputation.

(a) **Application.** This section applies to incumbent local exchange companies (ILECs) as that term is defined in the Public Utility Regulatory Act (PURA), §51.002(3). The obligations prescribed by this section may be applied to an ILEC with fewer than one million access lines in the state only on a bona fide request from a party having a justiciable interest.

(b) **Purpose.** This section implements the state's regulatory policy to prevent an ILEC from selling a wholesale service or function to another telecommunications utility at a price that is higher than the rate the ILEC implicitly includes in retail services it provides.

(c) **Definition.** The term "competitively available" when used in this section, shall mean a service that may be obtained from at least one source other than the ILEC to an extent sufficient to discipline the price charged by the ILEC in the state. In the context of an imputation test for a retail service, there shall be a rebuttable presumption that a wholesale service is competitively available if:
- (1) the ILEC providing the retail service has elected under the Public Utility Regulatory Act, Chapter 58 and the wholesale service is a competitive service; or
- (2) the service is available from a competitor, other than a pure reseller, to 60% of the access lines to which the retail service is or will be available.

(d) **Services for which imputation is required.** Except as provided otherwise in subsection (e) of this section, imputation of the price of a wholesale service is required in establishing the rates for a retail service if:
- (1) the retail service cannot be purchased at wholesale rates for resale by a competitor; and
- (2) a wholesale service that is not competitively available is necessary for the competitor to provide its competing service.

(e) **Rates to which imputation is not required.** The price of a retail local exchange telephone service that is a basic network service or a retail local exchange telephone service whose rate is capped pursuant to PURA Chapter 59 shall not be subject to the requirements of this section unless:
- (1) the price cap under PURA Chapter 58 or the election period under PURA Chapter 59 has expired;
- (2) the price cap applicable to the service is raised;
- (3) the ILEC's rates for local exchange telephone service are restructured or rebalanced; or
- (4) the service is reclassified from a basic network service to a non-basic service.

(f) **Imputation on a service-by-service basis.** Imputation shall be applied on a service-by-service basis, not on a rate-element-by-rate-element basis.

(g) **Imputation methodology.** An imputation study filed pursuant to this section shall demonstrate that the price the ILEC charges for a retail service recovers the cost of providing the service. Alternatively, the study may demonstrate that, no later than the second year after the retail service is first offered, the revenue the ILEC receives from the service recovers the cost of providing the service. For purposes of this section, the cost of providing a retail service is defined as the sum of:
- (1) specifically tariffed premium rates for the noncompetitive services or service functions, or elements of these noncompetitive services or service functions (or their functional equivalents) that are used to provide the retail service;

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(2) the total service long-run incremental costs of the competitive services or service functions that are used;
(3) any costs, not otherwise reflected in paragraphs (1) or (2) of this subsection, that are specifically associated with provision of the retail service or group of services; and
(4) any cost or surcharge associated with an explicit subsidy that is applied to all providers of the retail service for the purpose of promoting universal service.

(h) **Imputation study for a new service or a revised rate.** In forecasting revenue and costs in an imputation study for a new service or a revised rate, it shall be the responsibility of the ILEC to demonstrate:
(1) the validity of the data on which the forecast is based;
(2) the validity of the statistical method or model on which the forecast is based; and
(3) the validity of the interpretation and application of the forecast in the imputation study.

(i) **Timing of imputation studies.** An imputation study shall be filed by an ILEC under any of the circumstances set out in paragraphs (1)-(5) of this subsection.
(1) Upon complaint by a party, and a finding by the commission that an imputation study is in the public interest, or on the commission's own motion. Upon receiving a complaint calling for an imputation study, the commission shall determine within 45 days whether an imputation study shall be required.
(2) When an ILEC files an application to reduce a rate for a retail service for which imputation is required.
(3) When an ILEC applies to increase a rate for a wholesale service that:
(A) is not competitively available; and,
(B) is necessary for a competitor to provide its competing service or is a component of a retail service for which imputation is required.
(4) In conjunction with an application to provide a new service or contract that uses a wholesale service that:
(A) is not competitively available; and
(B) is necessary for a competitor to provide its competing service.
(5) As otherwise ordered by the commission.

(j) **Confidentiality of data.** If a party classifies data filed with the commission as confidential, the party should designate the section of the Public Information Act (Chapter 522, Texas Government Code) that excepts the information from public disclosure. The commission will treat such information as confidential subject to the provisions of the Public Information Act and protective orders issued by the commission applicable to the data.

(k) **Waiver provisions.**
(1) The commission may waive the imputation requirement for a public interest service such as 9-1-1 or dual party relay service if the commission determines that the waiver is in the public interest.
(2) After notice and hearing, and subject to the requirements of law, the commission may waive any provision of this section for good cause.

§26.276. Unbundling.

(a) **Purpose.** The purpose of this section is to implement Public Utility Regulatory Act (PURA) §60.021, which requires an incumbent local exchange company (ILEC), at a minimum, to unbundle its network to the extent ordered by the Federal Communications Commission (FCC).

(b) **Application.**

(1) The provisions of this section apply, as of its effective date, to each ILEC that serves one million or more access lines.

(2) The provisions of this section apply upon a bona fide request to each ILEC that serves fewer than one million access lines.

(c) **Unbundling requirements.**

(1) **Unbundling pursuant to current FCC requirements**. Each ILEC that is subject to this section shall unbundle as specified in subparagraphs (A) and (B) of this paragraph. An ILEC with interstate tariffs in effect shall unbundle its network/services under the same terms and conditions, except for price, as it unbundles its interstate services, unless ordered otherwise by the commission. The ILEC shall also not impose a charge or rate element that is not included in its interstate tariffs for these unbundled rate elements. Nothing herein precludes the commission from requiring further unbundling of local exchange company services, including the services unbundled pursuant to this paragraph.

(A) The ILEC's network shall be unbundled to the extent ordered by the FCC in compliance with its open network architecture requirements; and

(B) Signaling for tandem switching shall be unbundled to the extent ordered by the FCC in compliance with CC Docket Number 91-141, Third Report and Order, In the Matter of Expanded Interconnection with Local Telephone Company Facilities, Transport Phase II.

(2) **Unbundling pursuant to future FCC requirements.** An ILEC shall unbundle its network/services as defined in the term "unbundling" in §26.5 of this title (relating to Definitions) for intrastate services to the extent ordered, in the future, by the FCC for interstate services. An ILEC with interstate tariffs in effect shall unbundle these services under the same terms and conditions, except for price, as it unbundles its interstate services, unless ordered otherwise by the commission. The ILEC shall also not impose a charge or rate element that is not included in its interstate tariffs for unbundling. Nothing herein precludes the commission from requiring further unbundling of local exchange company services, including the services unbundled pursuant to this paragraph.

(d) **Costing and pricing of services in compliance with this section.**

(1) **Cost standard.** Services unbundled in compliance with this section shall be subject to the following cost standard**.**

(A) The cost standard for unbundled services shall be the long run incremental costs (LRIC) of providing the service.

(B) Any ILEC subject to §23.91 of this title (relating to Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility Services) shall file LRIC studies pursuant to that rule for unbundled components specified in subsection (c)(1) of this section.

(C) For any ILEC that is subject to §23.91 of this title, the cost standard for unbundled services required under subsection (c)(2) of this section shall be the long run incremental costs pursuant to §23.91 of this title.

(D) The long run incremental cost standard shall not apply if the ILEC proposes rates that are the same as the rates in effect for the carrier's interstate provision of the same or equivalent

unbundled service or if the ILEC adopts rates of another ILEC pursuant to paragraph (2)(B) of this subsection.

(2) **Pricing standard.** Services unbundled in compliance with this section shall be subject to the following pricing standard.

(A) Any ILEC may propose rates, without cost justification, that are at parity with the rates in effect for the carrier's interstate provision of the same or equivalent unbundled service. The ILEC shall amend its intrastate rates, terms and conditions to be consistent with subsequent revisions in its interstate tariffs providing for unbundling pursuant to filing requirements established in subsection (f)(4) of this section.

(B) In addition to the provision in subparagraph (A) of this paragraph, ILECs that are not subject to §23.91 of this title may adopt the rates of another ILEC that are developed pursuant to the requirements of this section.

(C) If an ILEC proposes rates that are not at parity with the rates in effect for the carrier's interstate provision of the same or equivalent unbundled service or does not adopt the rates of another ILEC pursuant to subparagraph (B) of this paragraph, the following requirements shall apply to any service approved under this section:

(i) Unless waived or modified by the presiding officer, the service shall be offered in every exchange served by the ILEC, except exchanges in which the ILEC's facilities do not have the technical capability to provide the service.

(ii) If the sum of the rates of the new unbundled components is equal to the price of the original bundled service and if the ratio of the rate of each unbundled component to its LRIC is the same for each unbundled component, there shall be a rebuttable presumption that the rate of an unbundled component is reasonable.

(iii) The proposed rates and terms of the service shall not be unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive.

(D) Rates based upon the new LRIC cost studies required under paragraph (1)(B) of this subsection shall be subject to the pricing rulemaking referred to in §23.91(p) of this title to the same extent as any other service offered by an ILEC subject to the pricing rule.

(e) **Basket assignment.** An ILEC electing incentive regulation under PURA Chapter 58 shall, in its compliance tariff filed pursuant to subsection (f) of this section, include a proposal and rationale for designating the unbundled components as basic services or non-basic services.

(f) **Filing requirements.**

(1) **Initial filing to implement subsection (c)(1) of this section in effect for ILECs serving one million or more access lines**. An ILEC serving one million or more access lines shall file initial tariff amendments to implement the provisions of subsection (c)(1) of this section not later than 60 days from the effective date of this section. The proposed effective date of such filings shall be not later than 30 days after the filing date, unless suspended. Tariff revisions filed pursuant to this subsection shall not be combined in a single application with any other tariff revision.

(2) **Filings to comply with subsection (c)(2) of this section for ILECs serving one million or more access lines.** An ILEC serving one million or more access lines shall file tariff amendments to implement the provisions of subsection (c)(2) of this section, within 60 days of the effective date of its interstate tariff providing for unbundling. The proposed effective date of such filings shall be not later than 30 days after the filing date, unless suspended. Tariff revisions filed pursuant to this subsection shall not be combined in a single application with any other tariff revision.

(3) **Filings to implement subsections (c)(1) and (2) of this section for ILECs serving fewer than one million access lines.** If an ILEC serving fewer than one million access lines receives a bona fide request, it shall unbundle its network/services pursuant to the bona fide request within 90 days

from the date of receipt of the bona fide request or shall have the burden of demonstrating the reasons for not unbundling pursuant to the bona fide request.

(4) **Filings to comply with subsection (d)(2)(A) of this section.** An ILEC proposing rates pursuant to subsection (d)(2)(A) shall file tariff amendments to implement the revisions in its interstate tariffs providing for unbundling, within 30 days of the effective date of its interstate tariff providing for unbundling. The proposed effective date of such filings shall be not later than 30 days after the filing date, unless suspended. Tariff revisions filed pursuant to this subsection shall not be combined in a single application with any other tariff revision.

(g) **Requirements for notice and contents of application in compliance with this section.**

(1) **Notice of Application.** The presiding officer may require notice to be provided to the public as required by Chapter 22, Subchapter D of this title (relating to Notice). The notice shall include, at a minimum, a description of the service, the proposed rates and other terms of the service, the types of customers likely to be affected if the service is approved, the probable effect on ILEC's revenues if the service is approved, the proposed effective date for the service, and the following language: "Persons who wish to comment on this application should notify the commission by (specified date, ten days before the proposed effective date). Requests for further information should be mailed to the Public Utility Commission of Texas, PO Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Office of Customer Protection at (512) 936-7120 or toll free at (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or may reach the commission's toll free number by calling Relay Texas at (800) 735-2988."

(2) **Contents of application for an ILEC serving one million or more access lines that is required to comply with subsection (f)(1), (2), and (4) of this section.** An ILEC shall request approval of an unbundled service by filing an application that complies with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission's Office of Regulatory Affairs, Legal Division, and one copy to the Office of Public Utility Counsel. The application shall contain the following information:

(A) a description of the proposed service and the rates, terms and conditions, under which the service is proposed to be offered and a demonstration that the proposed rates, terms and conditions are in conformity with the requirements in subsections (c), (d), and (e) of this section, as applicable;

(B) a statement detailing the type of notice, if any, the ILEC has provided or intends to provide to the public regarding the application and a brief statement explaining why the ILEC's notice proposal is reasonable;

(C) a copy of the text of the notice, if any;

(D) a long run incremental cost study supporting the proposed rates, if the rates are not at parity with the carrier's interstate rates;

(E) detailed documentation showing that the proposed service is priced above the long run incremental cost of such service, including all workpapers and supporting documentation relating to computations or assumptions contained in the application, if the rates are not at parity with the carrier's interstate rates;

(F) projection of revenues, demand, and expenses demonstrating that in the second year after the service is first offered, the proposed rates will generate sufficient annual revenues to recover the annual long run incremental costs of providing the service, as well as a contribution for joint and/or common costs, if the rates are not at parity with the carrier's interstate rates;

(G) explanation that the proposed rates and terms of the service are not unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive;

(H) the information required by §§26.121 of this title (relating to Privacy Issues), 26.122 of this title (relating to Customer Proprietary Network Information, and 26.123 of this title (relating to Caller Identification Services); and

(I) any other information which the ILEC wants considered in connection with the commission's review of its application.

(3) **Contents of application for an ILEC serving fewer than one million access lines that is required to comply with subsection (f)(3) and (4) of this section.** An ILEC shall file with the commission an application complying with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission's Office of Regulatory Affairs, Legal Division, and one copy shall be delivered to the Office of Public Utility Counsel. The application shall contain the following:

(A) contents of application required by paragraph (2)(A), (B), (C), (H), and (I) of this subsection;

(B) contents of application required by paragraph (2)(D), (E), (F), and (G) of this subsection, if the rates are not at parity with the carrier's interstate rates or the rates of another ILEC;

(C) a description of the proposed service(s) and the rates, terms, and conditions under which the service(s) are proposed to be offered and an affidavit from the general manager or an officer of the ILEC approving the proposed service;

(D) a notarized affidavit from a representative of the ILEC affirming that the rates are just and reasonable and are not unreasonably preferential, prejudicial, or discriminatory; subsidized directly or indirectly by regulated monopoly services; or predatory, or anticompetitive; and

(E) projections of the amount of revenues that will be generated by the proposed service.

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

(1) **Administrative review**. An application considered under this section may be reviewed administratively unless the ILEC requests the application be docketed or the presiding officer, for good cause, determines at any point during the review that the application should be docketed.

(A) The operation of the proposed rate schedule may be suspended for 35 days after the effective date of the application. The effective date shall be according to the requirements in subsection (f) of this section.

(B) The application shall be examined for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant shall be notified within ten working days of the filing date of the specific deficiency in its application, and the earliest possible effective date of the application shall be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any time deadlines shall be determined from the 30th day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date.

(C) While the application is being administratively reviewed, the commission staff and the staff of the Office of the Public Utility Counsel may submit requests for information to the ILEC. Six copies of all answers to such requests for information shall be filed with Central Records and one copy shall be provided to the Office of Public Utility Counsel within ten days after receipt of the request by the ILEC.

(D) No later than 20 days after the filing date of the sufficient application, interested persons may provide to the commission staff written comments or recommendations concerning the application. The commission staff shall and the Office of Public Utility Counsel may file with the presiding officer written comments or recommendations concerning the application.

(E) No later than 35 days after the effective date of the application, the presiding officer shall issue an order approving, denying, or docketing the ILEC's application.

(2) **Approval or denial of application**. The application shall be approved by the presiding officer if the proposed tariff meets the requirements in this section. If, based on the administrative review,

the presiding officer determines, that one or more of the requirements not waived have not been met, the presiding officer shall docket the application.

(3) **Standards for docketing.** The application may be docketed pursuant to §22.33(b) of this title (relating to Tariff Filings).

(4) **Review of the application after docketing**. If the application is docketed, the operation of the proposed rate schedule shall be automatically suspended to a date 120 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after the effective date, whichever is later. Affected persons may move to intervene in the docket, and the presiding officer may schedule a hearing on the merits. The application shall be processed in accordance with the commission's rules applicable to docketed cases.

(5) **Interim rates.** For good cause, interim rates may be approved after docketing. If the service requires substantial initial investment by customers before they may receive the service, interim rates shall be approved only if the ILEC shows, in addition to good cause, that it will notify each customer prior to purchasing the service that the customer's investment may be at risk due to the interim nature of the service.

(i) **Commission processing of waivers**. Any request for modification or waiver of the requirements of this section shall include a complete statement of the ILEC's arguments and factual support for that request. The presiding officer shall rule on the request expeditiously.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter L. WHOLESALE MARKET PROVISIONS

§26.283. Infrastructure Sharing.

(a) **Definitions.** The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise.

(1) **Local exchange company (LEC)** — As defined in the Public Utility Regulatory Act, Texas Utilities Code §51.002(4) (Vernon 1998) (PURA).

(2) **Public switched network infrastructure and technology** — Includes, but is not limited to:

(A) Basic public switched network infrastructure and technology - The physical plant and corresponding functionalities that provide basic network services such as those listed in PURA §58.051.

(B) Advanced public switched network infrastructure and technology - The physical plant and corresponding functionalities that provide integrated services digital network (ISDN) services as set forth in PURA §58.203(c), optical fiber or equivalent facilities, and Common Channel Signaling System 7.

(3) **Requesting local exchange company (LEC)** — A LEC that requests another LEC to share public switched network infrastructure and technology.

(4) **Sharing local exchange company (LEC)** — A LEC that has been requested by another LEC to share public switched network infrastructure and technology.

(5) **Sole carrier of last resort** — The LEC holding a certificate of convenience and necessity, as to the geographic area covered by such certificate.

(b) **Requirement to share.** The commission may require any LEC to share public switched network infrastructure and technology with any other LEC that requests such sharing. In determining whether a LEC is required to share public switched network infrastructure and technology, the commission will consider such matters as:

(1) whether the requesting LEC lacks economies of scale or scope that would prohibit the requesting LEC from offering a particular telecommunications service in an economically efficient manner in a specific geographic area;

(2) whether the requesting LEC is the sole carrier of last resort in the specific geographic area involved;

(3) whether requiring a LEC to share its public switched network infrastructure and technology would be economically efficient for the sharing LEC, or, if not, whether terms and conditions can and should be imposed that would make such sharing economically efficient; and

(4) whether requiring a LEC to share its public switched network infrastructure and technology is in the public interest.

(c) **Procedure to request sharing.**

(1) A LEC requesting that another LEC share public switched network infrastructure and technology shall make its request to the sharing LEC in writing.

(2) The requesting LEC and the sharing LEC shall negotiate terms and conditions of the sharing arrangement. The terms and conditions may include, but are not required to include, joint ownership and/or operation of public switched network infrastructure and services by the LECs.

(3) Within 60 days after a LEC has received a request for sharing, the sharing and requesting LECs shall jointly file an agreement setting forth the terms and conditions of the sharing arrangement, unless the requesting LEC and the sharing LEC agree to an extension of time. If the parties cannot reach agreement on the appropriate terms and conditions, the requesting party shall instead file a petition to resolve issues related to infrastructure sharing. A petition to resolve issues related to infrastructure sharing shall be filed not later than the 60th day after the sharing LEC's receipt of the request for sharing, or such later time as the requesting LEC and the sharing LEC agree. The petition shall set forth, as appropriate, the terms and conditions on which agreement has been reached, the specific issues the commission is being asked to resolve, the requesting LEC's suggested resolution of such

issues in terms that could be inserted into an agreement, and a suggested procedural schedule for resolution of the issues. The petition shall also address the factors that the commission must consider under subsection (b) of this section. If a petition is filed in lieu of an agreement, the sharing LEC must file a response within 10 days of the filing of the petition. The sharing LEC's response must address, in like manner, each item required by this subsection to be included in the petition.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter M. OPERATOR SERVICES

§26.311. Information Relating to Operator Services.

(a) **Purpose.** The provisions of this subchapter are intended to ensure that competitive operator services are provided in a fair and reasonable manner and to maximize consumer choice by ensuring that consumers have access to their carriers of choice when using telephones intended for use by the public.

(b) **Application.** This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Act (PURA) §52.154.

(c) **Definition.** The term "rate information," when used in this subchapter, shall mean all charges ultimately charged to the end user by the operator service provider (OSP), including any surcharges, fees, and any other form of compensation charged by the OSP on behalf of the call aggregator.

(d) **Complaints relating to operator services.**

(1) The OSP shall have a toll-free telephone number that callers may use, during normal business hours, to voice complaints and make inquiries. After normal business hours, the OSP shall have an answering machine/mechanism to receive complaints.

(2) Section 26.30 of this title (relating to Complaints) shall apply to all complaints under this subchapter.

(3) The commission may formally investigate any complaint against any OSP, interexchange carrier or dominant certificated telecommunications utility alleged to have violated the provisions of this subchapter. The company shall be given an opportunity to informally resolve any complaint involving violation of these rules. If no resolution is achieved informally, the commission may formally investigate the complaint upon its own motion or upon request of the original complainant.

(e) **Enforcement.** Upon proper notice, evidentiary hearing, and determination that a violation has occurred or is about to occur, the commission may take action to stop, correct or prevent the violation. Any OSP found to be in violation of provisions of this subchapter is subject to administrative penalties, civil penalties, and injunctive relief pursuant to the PURA §§15.023, 15.028, and 15.021.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter M. OPERATOR SERVICES

§26.313. General Requirements Relating to Operator Services.

(a) **Application.** This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Act (PURA) §52.154.

(b) **Requirements to provide operator service.**

(1) An operator service provider (OSP) that provides end user operator services for a call aggregator through a telephone that is intended for public use must do so pursuant to a contract with the call aggregator, as a presubscribed interexchange carrier, or, in the case of a dominant certificated telecommunications utility (DCTU), pursuant to a tariff approved by the commission.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, an OSP that owns or otherwise controls telephones that are intended for public use shall for those telephones comply with all provisions of this subchapter otherwise required to be included in contracts between OSPs and call aggregators, without the necessity of a contract.

(3) Where a different OSP is presubscribed for operator services at pay telephones owned by a DCTU, the DCTU shall for those telephones comply with all provisions of this subchapter otherwise required to be included in contracts between OSPs and call aggregators.

(4) If a DCTU or presubscribed interexchange carrier provides operator services through telephones that are intended for public use, other than those telephones subject to paragraphs (2) and (3) of this subsection, and pays fees or other forms of compensation to a call aggregator, the DCTU or presubscribed interexchange carrier shall do so pursuant to a contract with the call aggregator.

(c) **Requirements before call is completed.** The provider of operator services shall:

(1) audibly and distinctly identify itself to the customer upon answering calls;

(2) audibly and distinctly identify itself to the billed party if the billed party is different from the caller;

(3) quote rate information at the caller's request, without charge, 24 hours a day, seven days a week; and

(4) permit the caller to terminate the call at no charge prior to completion of the call by the OSP.

(d) **Requirements for uncompleted call.** There shall be no charge to the caller for any uncompleted call.

(1) No OSP shall knowingly bill for uncompleted calls.

(2) If the OSP cannot determine with certainty that a call was completed, it shall provide a full credit for any call of one minute or less upon being informed by a customer that the call was not completed.

(3) An uncompleted call includes, but shall not be limited to:

(A) calls terminating to an intercept recording, line intercept operator, or a busy tone; or

(B) calls that are not answered.

(4) An uncompleted call does not include calls using busy line interrupt, line status verification, or directory assistance services.

(e) **Requirement to provide access to a live operator.**

(1) Each telecommunications utility that provides operator services shall ensure that a caller may access a live operator at the beginning of all automated operator-assisted calls through a method designed to be easily and clearly understandable and accessible to the caller. This requirement applies only to "0-" calls where the caller reaches an automated operator. Within 30 days of initially providing operator services each such telecommunications utility shall file in the Central Records Office of the commission, for review, a document describing the method by which the utility is providing access to a live operator, as provided by the Public Utility Regulatory Act §55.088.

(2) This subsection applies regardless of the method by which the telecommunications utility provides the operator service.

(3) The requirements of this subsection shall not apply to telephones located in confinement facilities.

(f) **Call splashing.** Call splashing is call transferring (whether caller requested or OSP initiated) that results in a call being rated and/or billed from a point different from that where the call originated. Call splashing shall not be allowed unless a waiver of the access requirements in §26.319(1)(A) of this title (relating to Access to the Operator of a Local Exchange Company (LEC)) has been granted pursuant to §26.319(3) of this title and unless:

(1) the originating OSP first clearly and explicitly notifies the caller that the call will be splashed and may result in rating and/or billing of the call from a point different from that where the call originated; and

(2) the originating OSP allows the caller to abort the call without charge after notification that the call will be splashed.

(g) **Other requirements.**

(1) OSPs that are not DCTUs are subject to the requirements contained in the Public Utility Regulatory Act and the commission's substantive rules for nondominant telecommunications utilities.

(2) If an OSP provides a local exchange company with information regarding end-user access to the OCP, the OSP must provide a single access code; must detail, by NPA-NXX, where the access code can be used to access the OSP; and must provide the local exchange company with appropriate instructions for use of the access code. The OSP is responsible for ensuring that the access code specified is available for each NPA-NXX listed and for updating the information.

§26.315. Requirements for Dominant Certificated Telecommunications Utilities (DCTUs).

(a) **Validation information.** Each DCTU shall make validation information (e.g., DCTU calling card numbers, whether an access line is equipped with billed number screening, or whether an access line is a pay telephone) available to any interexchange carrier requesting it on the same prices, terms, and conditions that the DCTU provides the service to any other interexchange carrier. The DCTU may comply with the requirements of this paragraph by providing its own database, making arrangements with another DCTU to provide the information, or making arrangements with a third-party vendor.

(b) **Billing and collection services.** Each DCTU shall offer billing and collection services, pursuant to subsection (c) of this section, to any interexchange carrier requesting it on the same prices, terms, and conditions that the DCTU provides the services to any other interexchange carrier.

(c) **Validation requirements.** If validation information is available for calls that the interexchange carrier (or a third-party billing and collection agent operating on behalf of the interexchange carrier) will bill through the DCTU, the interexchange carrier is required to validate the call and is allowed to submit the call for billing only if the call was validated. To insure that only validated collect calls are billed, the DCTU shall:

(1) Establish edits in the DCTU's current billing system to insure that calls less than five minutes in duration, and total charges for that call exceed $35, are not billed; or

(2) For charges that appear on the retail consumer's monthly billing statement, establish internal processes to track retail consumer complaints for each billing month for each third party entity. For any third party entity with complaints that exceed a threshold of 0.5% of all records billed for the billing month in which the report is generated, the DCTU shall initiate a proceeding with the commission to determine whether the billing and collection agreement should be terminated by commission order. In conjunction with the internal tracking procedures, the DCTU will establish a random, periodic, unannounced audit process whereby the DCTU will audit messages. The audited carrier will be required to provide the DCTU the necessary audit data in a form consistent with DCTU capabilities. The fact an audit has or has not been conducted and/or the DCTU has not previously questioned the charges at issue does not constitute approval or endorsement of charges by the DCTU; and

(3) The DCTU shall implement a public education campaign to advise customers of the responsibilities and obligations associated with accepting collect telephone calls. The public education campaign must also inform customers of the DCTU's policies and procedures for contesting unauthorized collect call charges. A DCTU fulfills this requirement if it publishes such information in the customer rights section of the white page directory.

(d) **Request to access another carrier.** If a DCTU receives a request from a caller to access another carrier, the DCTU shall, using the same prices, terms, and conditions for all carriers, either:

(1) transfer the caller to the caller's carrier of choice if facilities that allow such transfer are available and if such transfer is otherwise allowed by law; or

(2) instruct the caller how to access the caller's carrier of choice if that carrier has provided the DCTU with the information referred to in §26.319(2) of this title (relating to Access to the Operator of a Local Exchange Company (LEC)).

§26.317. Information to be Provided at the Telephone Set.

(a) This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Act (PURA) §52.154.

(b) A contract between an operator service provider (OSP) and a call aggregator for the provision of operator services through telephones that are intended for public use shall require the call aggregator to attach to each telephone set that has access to the operator service and that is intended for public use, a card furnished by the OSP that provides:

(1) the name of the OSP;

(2) instructions for accessing the OSP, with a statement that the OSP will quote rate information upon request at no charge to the caller, 24 hours a day, seven days a week, or a statement that instructions for obtaining rate information are available at a designated toll-free telephone number, 24 hours a day, seven days a week;

(3) instructions for accessing the operator of a local exchange company that meets the requirements of §26.315(d) of this title (relating to Requirements for Dominant Certificated Telecommunications Utilities (DCTUs)), or a statement that instructions for accessing such local exchange company operator are available at a designated toll-free telephone number, 24 hours a day, seven days a week, except local exchange companies meeting the requirements of §26.315(d) of this title are exempt from this paragraph if the local exchange company is the OSP for which instructions are posted pursuant to paragraph (2) of this subsection;

(4) instructions for registering a complaint about the service at a designated toll-free telephone number;

(5) instructions in English and Spanish for accessing emergency service; and

(6) a notice that states, "You may use another long distance carrier. Follow your carrier's instructions, or contact the local exchange company operator for assistance." or, in the case of telephones that directly route "0-" calls to the local exchange company operator, a notice that states, "You may use another long distance carrier. Follow your carrier's instructions, or dial "0" for assistance." (The local exchange company referred to in this paragraph must serve the area and meet the requirements of §26.315(d) of this title.) The notice required by this paragraph may use the term "local exchange carrier operator" in place of the term "local exchange company operator."

(c) Notwithstanding subsection (b) of this section, in the case of pay telephones owned by the DCTU, where the DCTU is the OSP for intraLATA operator service and another carrier is the OSP for interLATA operator service, the interLATA OSP shall inform the DCTU of the appropriate information to be posted, and the DCTU shall post the information required by subsection (b)(1), (2) and (4) of this section for the interLATA OSP. In addition, the DCTU shall post the information required by subsection (b)(5) and (6) of this section. After initial information cards are posted, DCTUs may file tariffs to recover from the OSPs presubscribed to pay telephones owned by the DCTUs the incremental cost for maintaining updated information cards plus a reasonable contribution.

(d) The commission may approve applications for modification of the requirements contained in this section upon showing of good cause. Applications for modification may be filed by the call aggregator or by the OSP. The commission shall process applications for modification using the following criteria and procedures:

(1) Each application for modification shall contain a certificate of service attesting that a copy of the request has been served upon the Office of Public Utility Counsel.

(2) Each application for modification shall clearly set forth the good cause for approval of the modification.

(3) Each application for modification shall initially be assigned a project control number, assigned to a presiding officer, and reviewed administratively.

(A) No later than 30 days after the filing date of the application, interested persons other than the commission staff and the Office of Public Utility Counsel may file written comments or recommendations concerning the application. No later than 60 days after the filing of the application, the commission staff shall, and the Office of Public Utility Counsel may, file written comments or recommendations concerning the application.

(B) Within 90 days of filing, after administrative review, the presiding officer shall approve, deny, or docket the application. The presiding officer may postpone a decision on the application beyond the 90th day after filing if he or she finds that additional information is needed.

(4) Any participating party may request, within ten days of the presiding officer's order approving or denying the application, that the application be docketed, and upon such request, the application shall be docketed.

(5) If the presiding officer either approves or denies the application for modification and no participating party has requested that the application be docketed, a copy of the presiding officer's ruling shall be provided to the commission. The commission may, within 40 days of the presiding officer's ruling, overrule the approval or denial and order that the application for modification be docketed.

(e) The requirements of this section shall not apply to telephones located in confinement facilities.

§26.319. Access to the Operator of a Local Exchange Company (LEC).

(a) This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Act (PURA) §52.154.

(b) A contract between an operator service provider (OSP) and a call aggregator for the provision of operator services through telephones that are intended for public use shall require that the call aggregator allow access to the operator of a local exchange company that meets the requirements enumerated in §26.315(d) of this title (relating to Requirements for Dominant Certificated Telecommunications Utilities (DCTUs)) and serves the area from which the call is made, and to other telecommunications utilities unless otherwise provided in paragraph (3) of this subsection.

(1) The access required by this subsection shall be provided subject to the conditions contained in subparagraphs (A) - (C) of this paragraph.

(A) Access to such local exchange company operator shall be accomplished either:

(i) by directly routing all "0-" calls to the local exchange company operator, without charge to the caller; or

(ii) by transfer or redirection of the call by the OSP, without charge to the caller, in accordance with the requirements of subclauses (I)-(III) of this clause:

(I) the OSP shall transfer or redirect the call to such local exchange company operator serving the originating area;

(II) the OSP shall transfer or redirect the call to such local exchange company operator in such a way that the local exchange company operator receives all signaling information (e.g., ANI and OLS) that would have been received by the local exchange operator if the call had been directly routed to the local exchange company; and

(III) the OSP shall be in compliance with the requirements of §26.321 of this title (relating to 9-1-1 Calls, "0-" Calls, and End User Choice).

(B) Access to interexchange carriers by "950-XXXX" and "1-800" numbers shall not be blocked.

(C) Access to interexchange carriers by "1010XXX+0" (whether "1010XXX+0+" or "1010XXX+0-") dialing shall not be blocked if the end office serving the originating line has originating line screening capability. A nonpresubscribed interexchange carrier shall not bill the call aggregator or the presubscribed interexchange carrier for local or toll messages originated at the call aggregator's facility by use of "1010XXX+0" (whether "1010XXX+0+" or "1010XXX+0-") dialing, or where the calls originated at the call aggregator's facility and otherwise reached an operator, if the call aggregator has subscribed to the necessary local exchange company-provided outgoing call screening or has otherwise provided the necessary call screening to ensure that appropriate originating line screening is transmitted with each call.

(2) The local exchange company that provides local service to the call aggregator shall provide to the call aggregator, upon request, the names, with addresses or telephone numbers, of interexchange carriers that can be accessed by use of "1010XXX" dialing from the call aggregator's facilities.

(3) Waivers to the access requirement may be granted by the commission to prevent fraudulent use of telephone services or for other good cause. An application under subparagraph (B) of this paragraph is not required for any generic waiver granted by subparagraph (A) of this paragraph.

(A) The commission finds that the following generic waivers of the access requirement are required to prevent fraudulent use.

(i) Access to interexchange carriers by "1010XXX+0" (whether "1010XXX+0+" or "1010XXX+0-") dialing may be blocked if the end office serving the originating line does not have originating line screening capability.

(ii) Access to interexchange carriers by "1010XXX+1" dialing may be blocked.

(iii) Access to the local exchange carrier operator and to other telecommunications utilities from telephones located in confinement facilities may be blocked.

(B) Applications for waiver of the requirement for access to the local exchange carrier operator or to other telecommunications utilities to prevent fraudulent use of telephone service or for other good cause may be filed by the call aggregator or the OSP. The commission shall process such applications for waiver using the following criteria and procedures:

(i) Each application for waiver shall contain a certificate of service attesting that a copy of the application has been served upon the Office of Public Utility Counsel and affected telecommunications utilities, including those identified in paragraph (2) of this subsection and the local exchange companies serving the affected exchange. If the application for waiver pertains to technical limitations of certain equipment, the application for waiver shall contain a certificate of service attesting that a copy of the application has been served upon the Office of Public Utility Counsel and all telecommunications utilities registered with or certificated by the commission. The certificate shall list the telecommunications utilities on which copies of the application were served.

(ii) If the application for waiver pertains to technical limitations of certain equipment, the equipment shall be clearly identified in the application, including the manufacturer and the model. The application shall indicate the date of purchase of the equipment by the call aggregator, the extent to which equipment is available to allow the access requirements to be met, the associated costs, and the time requirements associated with equipment modifications.

(iii) The access requirement shall be enforced while the application for waiver is pending.

(iv) Each application for waiver shall initially be assigned a project control number, assigned to a presiding officer, and reviewed administratively.

(I) No later than 30 days after the filing date of the application, interested persons other than the commission staff and the Office of Public Utility Counsel may file written comments or recommendations concerning the application. No later than 60 days after the filing of the application, the commission staff shall, and the Office of Public Utility Counsel may, file written comments or recommendations concerning the application.

(II) Within 90 days of the filing, after administrative review, the presiding officer shall approve, deny, or docket the application. The presiding officer may postpone a decision on the application beyond the 90th day after filing if he or she finds that additional information is needed to determine whether good cause exists.

(v) A participating party may request, within ten days of the presiding officer's ruling approving or denying the application, that the application be docketed, and upon such request, the application shall be docketed.

(vi) If the presiding officer either approves or denies the application for waiver and no participating party has requested that the application be docketed, a copy of the presiding officer's ruling shall be provided to the commission. The commission may, within 40 days of the presiding officer's ruling, overrule the approval or denial and order that the request for waiver be docketed.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter M. OPERATOR SERVICES

§26.321. 9-1-1 Calls, "0-" Calls, and End User Choice.

(a) This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Act (PURA) §52.154.

(b) A contract between an operator service provider (OSP) and a call aggregator for the provision of operator services through telephones that are intended for public use shall require the call aggregator to allow 9-1-1 calls to be outpulsed directly to the public service answering point without requiring a coin or credit card.

(c) Where end user choice, as defined in §26.5 of this title (relating to Definitions), is not available, a contract between an OSP and a call aggregator for the provision of operator services through telephones that are intended for public use shall require the call aggregator to allow “0-” calls and to directly, without charge to the calling party, route all “0-” calls to an OSP that provides access to emergency services that meet the technical standards set forth in paragraphs (1)-(6) of this subsection. The OSP shall:

(1) identify the originating telephone number and the location of the originating telephone, except dominant certificated telecommunications utilities (DCTUs) shall be allowed to identify the location using internal sources such as repair service or business office records if such internal sources are accessible to operators for emergency purposes 24 hours a day;

(2) have a complete and current list of all emergency service provider telephone numbers for each NPA-NXX served, including, but not limited to, police or sheriff, fire, and ambulance;

(3) be available 24 hours a day, seven days a week, without requiring a coin or credit card;

(4) promptly connect the appropriate emergency service provider;

(5) stay on the line until such time as the operator determines that the caller has been connected to the proper emergency service provider; and

(6) require that the call aggregator make a test call when equipment providing access to the OSP is installed, serviced, or relocated and at least semi-annually from each originating telephone number subscribed to the OSP, in order to verify the originating telephone number and the location of the telephone, unless the OSP receives automatic number identification (ANI), as defined in §26.5 of this title for that telephone number.

(d) When and where available, use of end user choice is required.

(e) The requirements of this section shall not apply to telephones located in confinement facilities.

(f) Nothing in this section shall be deemed to require the initial routing of “0-” calls from pay telephones owned by a local exchange company that provides access to emergency service providers and that meets the requirements enumerated in §26.315 of this title (relating to Requirements for Dominant Certificated Telecommunications Utilities (DCTUs)) to any OSP other than the local exchange company itself.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter N. PAY TELEPHONE SERVICE.

§26.341. General Information Relating to Pay Telephone Service (PTS).

(a) **Definition.** The term "rate information", when used in this subchapter, shall mean all charges ultimately charged by the PTS provider, including any surcharges, fees, and any other form of compensation charged by the PTS provider on behalf of the operator service provider.

(b) **Registration**. All pay telephone service providers shall register with the commission pursuant to §26.102 of this title (relating to Registration Requirements for Pay Telephone Service Providers).

(c) **Violation of regulations.** The commission may order disconnection of service for up to one year for repeat violations of commission rules. If the commission finds that a registered pay telephone service provider has violated any provision of this section, the commission shall order the provider to take corrective action, as necessary, and the provider may be subject to administrative penalties and other enforcement actions pursuant to the Public Utility Regulatory Act (PURA), Chapter 15. Further, if the commission finds that a registered pay telephone service provider has repeatedly violated any provisions of this section, the commission shall order termination of a pay telephone service provider's registration pursuant to PURA, §17.052.

(d) **Enforcement.** The commission shall coordinate its enforcement efforts against a pay telephone service provider for fraudulent, unfair, misleading, deceptive, or anticompetitive business practices with the Office of the Attorney General, to ensure consistent treatment of specific alleged violations.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter N. PAY TELEPHONE SERVICE.

§26.342. Pay Telephone Service Tariff Provisions.

(a) **Application.** This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Act (PURA) §52.154.

(b) **Available upon request.** Upon formal request for service by any prospective provider of pay telephone service (PTS), a certificated telecommunications utility (CTU) is required to file a tariff providing for interconnection of customer-owned pay telephones, except as otherwise provided in subsection (c) of this section.

(c) **Special assembly tariffs.** A CTU with fewer than 50 pay telephone lines may provide pay telephone access service (PTAS) pursuant to existing special assembly tariffs; however, in no event may a CTU provide to more than ten special assembly arrangements. Special assembly rates must be computed in accordance with this section. CTUs that provide PTAS pursuant to special assembly tariffs must enter into a written agreement with the PTS provider that requires the provider to perform all functions and obligations specified in §26.344 of this title (relating to Pay Telephone Service Requirements). When a CTU that holds a certificate of convenience and necessity (CCN) makes its initial filing to offer PTAS, the application must include the proposed tariff, cost studies or a commission approved rate for similar services offered by a larger CTU holding a CCN.

(d) **Enforcement of tariff requirements.** If a PTS provider is in violation of a tariff provision, the CTU must notify the PTS provider of the violation in writing. Such notice must refer to the specific tariff provisions being violated. The notice must state that the PTS provider is subject to disconnection by the CTU of the instrument(s) in violation of the tariff unless the PTS provider corrects the violation and notifies the CTU in writing, within 20 days of receipt of the notice of the violation, that the violation has been corrected. The CTU may disconnect the instrument(s) that are in violation of the tariff on or after the 20th day after receipt of the notice by the PTS provider, if the PTS provider did not notify the CTU in writing within 20 days of receipt of the notice that the violation was corrected. However, if the PTS provider has filed a complaint with the commission regarding the disconnection and has provided the CTU with a copy of the complaint that indicates that the complaint has been filed with the commission within 20 days of receipt of the notice of a violation from the CTU, the CTU may not disconnect the instrument(s) pending resolution of the complaint by the commission.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter N. PAY TELEPHONE SERVICE.

§26.343. Responsibilities for Pay Telephone Service (PTS) of Certificated Telecommunications Utilities (CTUs) Holding Certificates of Convenience and Necessity (CCNs).

(a) A listing in the local telephone directory for each pay telephone must be provided to any provider of pay telephone service (PTS) on request.

(b) Pay telephone access service (PTAS) must be available in all exchanges.

(c) Incoming and outgoing call screening on pay phone calls must be provided where facilities are available.

(d) Regardless of whether call screening is available, the CTU will not bill any call, including, but not limited to, third number billed, collect, "0+" or "0-" calls, to a number which has been clearly identified to the certificated telecommunications utility operator at the time of the call attempt as a pay telephone. The certificated telecommunications utility will not be responsible for refunds or adjustments of charges for calls placed through non-certificated telecommunications utilities carrier operators, except as provided in §26.347 of this title (relating to Fraud Protection for Pay Telephone Service).

(e) The CTU need not initiate a maintenance service call or take any other action in response to a trouble report on a customer-owned pay telephone until such time as requested by the pay telephone owner or its agent. The pay telephone owner must keep the CTU advised of the identity of the pay telephone owner or agent authorized to request a maintenance service call.

(f) The CTU must provide to a PTS provider using automated call completion technology to complete operator service calls the same services and information that the CTU provides to interexchange carriers in §26.313(d)(1) and (2) of this title (relating to General Requirements Relating to Operator Services), on the same prices, terms, and conditions that any interexchange carrier receives from the CTU.

(g) CTUs must file tariffs to offer direct dialed international call blocking ("011+" and "1010XXX+011+") as facilities become available.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter N. PAY TELEPHONE SERVICE.

§26.344. Pay Telephone Service Requirements.

(a) **Requirements before call is completed.** If the pay telephone service (PTS) provider uses automated call completion technology to complete operator service calls, the provider of PTS must:
- (1) audibly and distinctly identify itself to the caller upon answering;
- (2) audibly and distinctly identify itself to the billed party, if the billed party is different from the caller;
- (3) provide a mechanism for the caller to obtain rate information, without charge, 24 hours a day, seven days a week; and
- (4) permit the caller or billed party to terminate the call at no charge prior to completion of the call by the PTS provider.

(b) **E911 or 911 calls, and "0-" calls.** The PTS provider must allow E911 or 911 calls to be outpulsed directly to the Public Service Answering Point at no charge and without requiring a coin or credit card. This requirement does not apply to pay telephones accessible to inmates of confinement facilities.

(c) **Access.**
- (1) The PTS provider must:
  - (A) provide access to operator services, 24 hours a day, seven days a week, at no charge and without requiring a coin or credit card;
  - (B) provide access to directory assistance, 24 hours a day, seven days a week;
  - (C) provide access that includes the local exchange calling scope of the certificated telecommunications utility (CTU) furnishing the pay telephone access service (PTAS) including mandatory extended area service (EAS) and expanded local calling (ELC), except that ELC rate additives are not applicable to PTS access lines; and
  - (D) provide access to the operator of a local exchange company that meets the requirements enumerated in §26.315(c) of this title (relating to Requirements for Dominant Certificated Telecommunications Utilities (DTCUs) and that serves the area from which the call is made, at no charge and without requiring a coin or credit card, either:
    - (i) by directly routing all local operator calls to such local exchange company operator, without charge to the caller; or
    - (ii) by transfer or redirection of the call by an operator service provider (OSP) in accordance with the provisions of §26.319(1)(A)(ii)(I)-(III) of this title (relating to Access to the Operator of a Local Exchange Company (LEC)).
- (2) The PTS provider must also allow access to other telecommunications utilities unless otherwise provided in subparagraph (C) of this paragraph.
  - (A) Access to interexchange carriers by "950-XXXX" and "1-800" or "1-888" numbers must not be blocked.
  - (B) Access to interexchange carriers by "1010XXX+0" (whether "1010XXX+0+" or "1010XXX+0-") dialing must not be blocked if the end office serving the originating line has originating line screening (OLS) capability.
  - (C) To prevent fraudulent use of the pay telephone, the access requirement is explicitly waived under the following conditions without prior application to the commission:
    - (i) Access to interexchange carriers by "1010XXX+0" (whether "1010XXX+0+" or "1010XXX+0-") dialing may be blocked, if the end office serving the originating line does not have OLS screening capability.
    - (ii) Access to interexchange carriers by "1010XXX+1" dialing may be blocked.
- (3) The requirements of this paragraph do not apply to pay telephones accessible to inmates of confinement facilities.

(d) **Other.**

(1) The PTS provider must:

(A) ensure that end users can place all local and toll calls, except direct-dialed international calls, from the pay telephone, including, but not limited to, operator-assisted international calls, collect calls, third number billed calls, and calling card calls;

(B) be responsible for the payment of charges for all local and toll messages, including, but not limited to, non-local directory assistance charges, except as provided in §26.347 of this title (relating to Fraud Protection for Pay Telephone Service);

(C) comply with all applicable federal, state and local laws and regulations including those concerning the use of pay telephones by disabled and/or hearing- or speech-impaired persons;

(D) not attach extension telephones to pay telephones, unless the pay telephone displays a notice that legibly and conspicuously states in capital letters, "YOUR CONVERSATION MAY BE OVERHEARD BECAUSE AN EXTENSION TELEPHONE IS ATTACHED TO THIS PHONE LINE.";

(E) not impose a time limit on local calls;

(F) ensure operator-assisted intrastate long distance usage sensitive rates are billed in increments of one minute or less, provided that the total per minute fee does not exceed the rate authorized in §26.346 of this title (relating to Rates and Charges for Pay Telephone Service);

(G) return to the end-user any pre-paid fee for a direct dialed intrastate long distance and/or local call that does not result in a completed call;

(H) not charge the caller for any uncompleted call in accordance with the provisions of §26.313(c)(1)-(4) of this title (relating to General Requirements Relating to Operator Services);

(I) not charge a fee for a local call greater than that posted on the informational placard attached to each pay phone;

(J) provide access to ILEC operators by dialing either "0" or "00" access codes; and

(K) the requirements of paragraph (1)(A) and (E) of this subsection do not apply to pay telephones accessible to inmates of confinement facilities.

(2) If the PTS provider uses automated call completion technology to complete operator service calls, and if validation information is available for calls that the PTS provider (or a third-party billing and collection agent operating on behalf of the PTS provider) will bill through a certificated telecommunications utility, the PTS provider is required to validate the call and is allowed to submit the call for billing only if the call was validated.

(3) PTS may be connected to, from, or through a customer-provided telecommunications switching system, or local exchange carrier-provided central office switching system, provided that the PTS provider meets all requirements of this rule. The PTS provider must ensure that access to E-911, 911 and/or 0- is not blocked and must comply with all legislative and rule requirements regarding the operation of E-911 and 911. This access configuration is not allowed if it prevents usage measurement, by the local exchange carrier, of a local exchange carrier-provided PTAS line. For purposes of this paragraph, local exchange carrier is defined as any entity holding either a certificate of convenience and necessity (CCN), certificate of operating authority (COA), or service provider certificate of operating authority (SPCOA).

(e) **Applications for waivers of the requirement for access.** The commission may approve waivers to the access requirements of subsection (c) of this section to prevent fraudulent use of telephone services or for other good cause. Applications for waiver may be filed by the provider of pay telephone service. The commission shall process such applications for waiver using the criteria and procedures set forth in §26.319(3)(B) of this title.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter N. PAY TELEPHONE SERVICE.

§26.345. Posting Requirements for Pay Telephone Service Providers.

(a) The pay telephone service (PTS) provider must attach to each instrument a card that provides:

(1) instructions in English and Spanish for accessing emergency service subject to the conditions contained in subparagraphs (A) and (B) of this paragraph:

(A) where E-911 or 911 emergency service is available, the caller must be instructed to dial 911 and the PTS provider must allow E-911 or 911 calls to be outpulsed directly to the Public Service Answering Point at no charge and without requiring a coin or credit card; or

(B) where E-911 or 911 is not available, the caller must be instructed to dial "0" and dialing "0" must, at no charge and without requiring a coin or credit card, directly connect the caller with an operator service provider (OSP) that is in compliance with the technical standards set forth in §26.321(b) of this title (relating to 9-1-1 calls, "0-" calls, and End User Choice);

(2) instructions for use, including specifically instructions for completion of local and toll calls, access to operator services, access to directory assistance, obtaining refunds, obtaining repair service, registering complaints at a designated toll-free telephone number, reporting out-of-service conditions, and using one-way calling (if the instrument is so equipped); and

(3) notice stating the name, address, and ten digit telephone number for the pay telephone owner or agent providing the set, and providing the name and toll-free telephone number of the owner or agent responsible for refunds and repairs; the PTS provider shall maintain current information on the placard at all times and shall notify the commission in writing of any changes to the business telephone number of the pay telephone owner, or changes of the physical address from which the pay telephone owner operates, within thirty calendar days of such change; and

(4) if an extension has been attached, a notice that legibly and conspicuously states in capital letters: "YOUR CONVERSATION MAY BE OVERHEARD BECAUSE AN EXTENSION TELEPHONE IS ATTACHED TO THIS PHONE LINE."; and

(5) a placard that clearly states the fee for completing a local call from that telephone.

(b) PTS providers must also attach to each instrument a card that says: "The long distance carrier serving this phone is {insert name of the pre-subscribed long distance telecommunications service provider}. You can learn what its rates are by calling {insert long distance telecommunications service providers' toll-free rate information phone number} at any hour at no cost to you. If you would rather use another long distance carrier, you can either use {insert name of incumbent local exchange provider}'s operator by calling {insert dialing directions here}, or use your own long distance carrier by following its dialing instructions or asking the operator for assistance."

(c) If the PTS provider subscribes to the services of an operator service provider (OSP) that is required to comply with Subchapter M of this chapter (relating to Operator Services), the PTS provider remains liable for compliance with this section, but may coordinate with the OSP so that information to be provided at the pay telephone set is not duplicated. If the PTS provider uses automated call completion technology to complete some operator service calls and subscribes to the services of an OSP that is required to comply with Subchapter M of this chapter, the PTS provider must ensure that the information provided at the pay telephone set clearly informs the caller about which information applies to which operator service calls.

(d) If a pay telephone cannot receive incoming calls, the PTS provider shall place in a conspicuous location on the pay telephone a notice, in letters one-quarter inch high, stating, "THIS TELEPHONE CANNOT RECEIVE TELEPHONE CALLS." Furthermore, the PTS provider shall not display the number of the pay telephone on any such telephone that does not receive incoming calls.

(e) The requirements of this subsection do not apply to pay telephones accessible to inmates of confinement facilities.

(f) **Applications for modification of information to be provided at the pay telephone set.** The commission may approve applications for modification of the requirements contained in subsection (b) and (c) of this section upon showing of good cause by the PTS provider. The commission shall process applications for modification using the criteria and procedures set forth in §26.317(c) of this title (relating to Information to be Provided at the Telephone Set).

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter N. PAY TELEPHONE SERVICE.

§26.346. Rates and Charges for Pay Telephone Service Providers.

(a) **Rate structure.** Certificated telecommunications utility (CTU) rates for wholesale service must be designed on a flat access line and/or a local message usage rate basis. Multi-element measured rates are prohibited. In areas without measuring capabilities, the CTU may use a flat rate usage surrogate instead of a per call message rate. Measurement capabilities are defined as the capability in place to measure and bill pay telephone usage without incurring unreasonable expense. The charge or surcharge a CTU imposes for an access line used to provide pay telephone service (PTS) in an exchange may not exceed the amount of the charge or surcharge the CTU imposes for an access line used for regular business purposes in that exchange.

(b) **Charges.**

(1) A PTS provider must:

(A) not impose on pay phone end users any charge for calls made under Chapter 771 or 772 of the Texas Health and Safety Code;

(B) not impose a charge for "950-XXXX" calls, "1010XXX+0", or "1-800" or "1-888"-type calls to nonpresubscribed interexchange carriers (for example "1-800-COLLECT", "1-800-CALLATT", or "1-800-877-8000");

(C) not impose a charge for local calls from pay telephones to the Telecommunications Relay Service (TRS);

(D) for local calls which are collect, operator-assisted or paid by credit card or calling card, not impose a charge which exceeds the highest applicable rate for such calls of any of the four largest interexchange carriers operating in this state; and

(E) for credit card, calling card, or live or automated operator-handled toll calls, not charge a rate or total charge that exceeds the authorized rates and charges listed in subparagraph (F) of this paragraph.

(F) charge no more than these rate caps for intrastate long distance and operator- assisted calls at Texas pay phones:

Mileage	1st Min.	Add'l Min.
0 - 10	.2975	.2625
11 - 22	.3150	.2975
23 - 55	.3325	.3150
56 - 124	.3675	.3500
125 - 292	.4025	.3850
293 - Over	.4200	.4025
Operator Service Charges:		
Customer-Dialed Calling Card Station		$2.50
Operator-Dialed Station		$3.75
Person To Person		$4.50
Long Distance Access Fee		$1.00

(2) The requirements of paragraph (1)(A) through (C) of this subsection do not apply to pay telephones accessible to inmates of confinement facilities.

(3) The requirements of paragraph (1)(B) and (D) through (F) of this subsection do not apply to electing local exchange companies.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter N. PAY TELEPHONE SERVICE.

§26.347. Fraud Protection for Pay Telephone Service.

(a) Notwithstanding the provision of §26.319 (1)(C) of this title (relating to Access to the Operator of a Local Exchange Company (LEC)) that would otherwise require notice to interexchange carriers, an operator services provider (OSP) must not bill the pay telephone service (PTS) provider for charges for any call billed to a pay telephone line where the call originated at that pay telephone by use of "1010XXX+0", "1010XXX+01", "950-XXXX", or "1-800" or "1-888" access codes, or where the call(s) originated at that pay telephone and otherwise reached an operator position, if the originating telephone line was subscribed to outgoing call screening and the call was placed after the effective due date of the outgoing call screening service order.

(b) An OSP or PTS provider that uses automated call completion technology to complete operator service calls must not bill charges for any collect or third number billed call to a PTS provider if the pay telephone line to which the call was billed was subscribed to incoming call screening and the call was placed after the effective due date of the incoming call screening service order.

(c) Any calls billed through a certificated telecommunications utility in violation of subsections (a) and (b) of this section must be removed from the PTS provider's bill by the certificated telecommunications utility upon identification and verification that the violation occurred. If it is determined that, at the time of the violation, the appropriate incoming or outgoing call screening was available to the OSP or PTS provider that uses automated call completion technology to complete operator service calls at the time of the call, the certificated telecommunications utility may return the charges for said call to the OSP or PTS provider as unbillable.

(d) Any calls billed directly by an OSP or PTS provider that uses automated call completion technology to complete operator service calls in violation of subsection (a) or (b) of this section must be removed from the PTS provider's bill by the OSP or PTS provider upon identification. The OSP or PTS provider using automated call completion technology to complete operator service calls may request an investigation of such a call by the certificated telecommunications utility serving the pay telephone to which the call was billed. If the certificated telecommunications utility (CTU) determines that the appropriate incoming or outgoing call screening was not available to the OSP or PTS provider using automated call completion technology to complete operator service calls at the time of the call, the OSP or PTS provider may bill the charges for said call to the relevant certificated telecommunications utility.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter O. NUMBERING.

§26.375. Reclamation of Codes and Thousands-Blocks and Petitions for Extension of Code and Thousands-Block Activation.

(a) **Purpose.** This section establishes the procedures under which this commission may order reclamation of a code or thousands-block, and under which a code holder may petition the commission for an extension of the period of time allowed for code or thousands-block activation.

(b) **Application.** This section applies to the following entities:
- (1) "Telecommunications provider" or "telecommunications utility" as defined in the Public Utility Regulatory Act (PURA) §51.002;
- (2) Any other entity that has been assigned a code by the North American Numbering Plan Administration (NANPA).

(c) **Definitions.** The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise.
- (1) **Activation period** — The six month period after the published Local Exchange Routing Guide (LERG) effective date.
- (2) **Area code or numbering plan area (NPA)** — The first three digits of a ten-digit telephone number that designates a "toll" center in the United States and Canada.
- (3) **Central office code (code) or NXX** — The second three digits of a ten-digit telephone number that identifies the local switching office.
- (4) **Code holder** — Any entity to which a code or thousands-block is assigned by the NANPA or the thousands-block pooling administrator.
- (5) **Expiration date** — The last day of the activation period.
- (6) **In service** — A code or thousands-block that has been activated and the code holder has commenced assigning individual telephone numbers to end users.
- (7) **Local Exchange Routing Guide (LERG)** — A collection of data that shows the relationship between a central office and tandem office and is used in the telephone network design process.
- (8) **Operating Company Number (OCN)** — The unique string of numbers assigned by the National Exchange Carrier Association (NECA) which identifies a telecommunications utility.
- (9) **Part 1** — The Central Office Code (NXX) Assignment Request form developed by the Industry Numbering Committee (INC) as an attachment to the Central Office Code (NXX) Assignment Guidelines.
- (10) **Part 1A** – The Thousands-Block Application form developed by the INC as an attachment to the Thousands-Block Number (NXX-X) Pooling Administration Guidelines.
- (11) **Part 4** — The Confirmation of Code In Service form developed by the INC as an attachment to the Central Office Code (NXX) Assignment Guidelines or the Confirmation of NXX-X Block In Service form developed by the INC as an attachment to the Thousands-Block Pooling Guidelines.
- (12) **Reclamation list** — The monthly list the commission receives of codes considered delinquent by the NANPA because Part 4s have not been filed within the required time period.
- (13) **Thousands-block** — One of ten sequential blocks of 1,000 numbers from a code.
- (14) **Thousands-block number pooling** — A process by which the 10,000 numbers in a code are separated into ten sequential blocks of 1,000 numbers each and allocated separately within a rate center.
- (15) **Thousands-block reclamation list** — The monthly list the commission receives of thousands-blocks considered delinquent by the thousands-block pooling administrator because Part 4s have not been filed within the required time period.

(d) **Reclamation.** The commission may instruct the NANPA to reclaim any code or thousands-block that has been:

(1) Assigned but is no longer in use by the assignee;
(2) Assigned to a service that is no longer offered;
(3) Assigned but not in service by the required six-month period; or
(4) Assigned, but not used in conformance with industry established guidelines.

(e) **Reclamation list and thousands-block reclamation list.**

(1) Each month the NANPA and the thousands-block pooling administrator will provide commission staff a list of codes and a list of thousands-blocks with delinquent Part 4s. Within ten days of receiving the monthly lists, commission staff will notify code holders of codes or thousands-blocks that have been added to the lists.

(2) Within ten days of receiving the notification the code holder shall respond, in writing, to staff by doing one or a combination of the following:
   (A) Filing a Part 4 for the code or thousands-block;
   (B) Providing a Part 1 for the code or thousands-block; or
   (C) Filing a Petition for Extension of the activation period under subsection (f) of this section.

(3) On or before the last business day of the month, commission staff shall respond to the NANPA and the thousands-block pooling administrator by forwarding copies of all applicable Part 4s and Part 1s received by staff, and reporting any applicable Petitions for Extension filed during that month.

(f) **Petition for extension.** These requirements apply whether the code holder is assigned a code or thousands-block.

(1) Before the expiration of the activation period, or after the code holder is notified of the delinquency under subsection (e) of this section, the code holder may file a Petition for Extension that shall include:
   (A) The name of the code holder and OCN;
   (B) Contact information, including name, address, phone number, fax number, and e-mail address;
   (C) List of the relevant code(s) or thousands-blocks(s) and identification of each as "growth" or "initial;"
   (D) Expiration date of each code or thousands-block;
   (E) Purpose for which the code or thousands-block was originally certified and assigned;
   (F) Detailed explanation of the need for the extension and an appropriate timeline;
   (G) Requested extension date; and
   (H) Supporting documentation and any other relevant information.

(2) An extension request shall be for no more than 90 days from the code or thousands-block expiration date. Multiple extensions may be granted.

(3) Within five business days of the filing of the petition, staff shall notify the code holder if the petition is insufficient because it does not contain all of the items listed under paragraph (1) of this subsection.

(4) Within seven business days of the filing of the petition, any party may file a pleading in favor of or against the petition.

(5) Within 15 business days of the filing of the petition, or within seven business days of receiving requested supplemental information, staff will file a recommendation on the petition.

(6) After receiving staff's recommendation, the commission will issue an administrative notice of approval or denial of the petition.

(7) Staff, the petitioning party, or any party filing for or against the petition may appeal the notice to the commission within seven business days. The commission will rule on any notice added to an open meeting agenda within 30 days of the date the appeal is filed, unless the commission orders otherwise.

(8) Reclamation shall be stayed pending the outcome of a Petition for Extension and any associated appeal.

(g) **Code holder reporting responsibilities.**

(1) A code holder shall report to the commission the name and OCN of the new code holder whenever it requests that the NANPA or the thousands-block pooling administrator transfer a code or thousands-block from one code holder to another.

(2) Code holders shall keep all contact information current with the NANPA.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter P. TEXAS UNIVERSAL SERVICE FUND.

§26.401. Texas Universal Service Fund (TUSF).

(a) **Purpose.** The purpose of the Texas Universal Service Fund (TUSF) is to implement a competitively neutral mechanism that enables all residents of the state to obtain the basic telecommunications services needed to communicate with other residents, businesses, and governmental entities. Because targeted financial support may be needed in order to provide and price basic telecommunications services in a manner to allow accessibility by consumers, the TUSF will assist telecommunications providers in providing basic local telecommunications service at reasonable rates in high cost rural areas. In addition, the TUSF will reimburse qualifying entities for revenues lost as a result of providing Lifeline services to qualifying low-income consumers under the Public Utility Regulatory Act (PURA); reimburse telecommunications carriers providing statewide telecommunications relay access service and qualified vendors providing specialized telecommunications devices and services for the disabled; and reimburse the Texas Health and Human Services Commission, the Texas Department of Housing and Community Affairs, the Texas Department of Assistive and Rehabilitative Services, the Office for Deaf and Hard of Hearing Services , the TUSF administrator, and the Public Utility Commission for costs incurred in implementing the provisions of PURA Chapter 56 (relating to Telecommunications Assistance and Universal Service Fund).

(b) **Programs included in the TUSF.**

(1) Section 26.403 of this title (relating to the Texas High Cost Universal Service Plan (THCUSP));
(2) Section 26.404 of this title (relating to the Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan);
(3) Section 26.406 of this title (relating to the Implementation of the Public Utility Regulatory Act §56.025);
(4) Section 26.408 of this title (relating to Additional Financial Assistance (AFA));
(5) Section 26.410 of this title (relating to Universal Service Fund Reimbursement for Certain IntraLATA Service);
(6) Section 26.412 of this title (relating to Lifeline Service Program);
(7) Section 26.414 of this title (relating to Telecommunications Relay Service (TRS));
(8) Section 26.415 of this title (relating to Specialized Telecommunications Assistance Program (STAP));
(9) Section 26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF));
(10) Section 26.418 of this title (relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds);
(11) Section 26.420 of this title (relating to Administration of Texas Universal Service Fund (TUSF));
(12) Section 26.421 of this title (relating to Designation of Eligible Telecommunications Providers to Provide Service to Uncertificated Areas);
(13) Section 26.422 of this title (relating to Subsequent Petitions for Service to Uncertificated Areas);
(14) Section 26.423 of this title (relating to High Cost Universal Service Plan for Uncertificated Areas where an Eligible Telecommunications Provider (ETP) Volunteers to Provide Basic Local Telecommunications Service); and
(15) Section 26.424 of this title (relating to Audio Newspaper Assistance Program).

(c) **Support available to deregulated markets.**

(1) An incumbent local exchange company may not receive support from the universal service fund for a deregulated market that has a population of at least 30,000.

(2) An incumbent local exchange company may receive support from the universal service fund for a deregulated market that has a population of less than 30,000 only if the company demonstrates to the commission that the company needs the support to provide basic local telecommunications service at reasonable rates in the affected market. A company may use evidence from outside the affected market to make the demonstration.

(3) An incumbent local exchange company may make the demonstration described by paragraph (2) of this subsection in relation to a market before submitting a petition to deregulate the market.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter P. TEXAS UNIVERSAL SERVICE FUND.

§26.402. Transparency and Accountability in the Administration of the Texas Universal Service Fund.

(a) **Purpose.** This section, in conjunction with the audit, eligibility, public reporting, and affidavits of compliance requirements set forth throughout this subchapter, establishes procedures to ensure reasonable transparency and accountability in the administration of the Texas Universal Service Fund (TUSF).

(b) **Application.**

(1) This section applies to a telecommunications provider that has been designated as an eligible telecommunications provider (ETP) by the commission pursuant to §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)). Subsections (c) and (d) of this section apply to a telecommunications provider that has been designated, or has applied after June 30, 2013 to be designated by the commission as an eligible telecommunications carrier (ETC) pursuant to §26.418 of this title (relating to Designation of Common Carrier as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds).

(2) All filings made with the commission pursuant to this section, including a filing subject to a claim of confidentiality, shall be filed with the commission's Filing Clerk in accordance with the commission's Procedural Rules, Chapter 22, Subchapter E, of this title (relating to Pleadings and other Documents).

(c) **Reports required for a price cap carrier designated as an ETP and as an ETC that receives federal USF high cost support.** This subsection applies to an ETP that has been designated as an ETC that receives federal high cost support and has been designated as a price cap carrier by the Federal Communications Commission (FCC).

(1) By July 1, 2013, a telecommunications provider that has been designated as an ETC shall file a five-year plan that describes with specificity proposed improvements or upgrades to the ETC's network throughout its service area or proposed service area. The information shall be submitted at the wire center level for a carrier receiving high cost support and on a census block level for a carrier receiving Mobility Fund support. The ETC shall estimate the area (expressed in square miles) and population that will be served as a result of the improvements for each wire center or census block as appropriate. An ETC that has been granted a limited ETC for purposes of providing Lifeline only, pursuant to 47 C.F.R. Part 54 Subpart E, is not required to submit a five-year plan. Any telecommunications provider that applies for ETC designation after June 30, 2013 shall submit a five-year plan with its ETC application.

(2) By July 1st of each subsequent year after filing its five-year plan pursuant to paragraph (1) of this subsection, each ETC shall submit a progress report on its five-year plan, including maps detailing its progress towards meeting its plan targets, an explanation of how much universal service support was received and how it was used to improve service quality, coverage, or capacity, and an explanation regarding any network improvement targets that have not been fulfilled in the prior calendar year. The information shall be submitted at the wire center level or census block as appropriate.

(d) **Reports required for a rate of return carrier, competitive local exchange carrier (CLEC), or wireless carrier designated as an ETP and as an ETC that receives federal USF high cost support**. This subsection applies to an ETP that has been designated as an ETC that receives federal high cost support and that has been designated as a rate of return carrier, competitive local exchange carrier, or wireless carrier by the FCC.

(1) By July 1, 2013, a telecommunications provider that has been designated as an ETC shall file a five-year plan that describes with specificity proposed improvements or upgrades to the ETC's network throughout its service area or proposed service area. The information shall be submitted

at the wire center level for a carrier receiving high cost support and on a census block level for carriers receiving Mobility Fund support. The ETC shall estimate the area (expressed in square miles) and population that will be served as a result of the improvements for each wire center or census block as appropriate. An ETC that has been granted a limited ETC for purposes of providing Lifeline only, pursuant to 47 C.F.R. Part 54 Subpart E, is not required to submit a five-year plan. Any telecommunications provider that applies for ETC designation after June 30, 2013 shall submit a five-year plan with its ETC application.

(2) By July 1st of each subsequent year after filing its five-year plan pursuant to paragraph (1) of this subsection, each ETC shall submit a progress report on its five-year plan, including maps detailing its progress towards meeting its plan targets, an explanation of how much universal service support was received and how it was used to improve service quality, coverage, or capacity, and an explanation regarding any network improvement targets that have not been fulfilled in the prior calendar year. The information shall be submitted at the wire center level or census block as appropriate.

(e) **Reports made public by the commission.** For each State fiscal quarter, no later than the 45th day after the end of the preceding quarter, the commission shall make the following information publicly available on the commission's website:

(1) A cash flow statement for the overall TUSF indicating starting balance, total revenues, disbursements for each program described in §26.401(b) of this title (relating to Texas Universal Service Plan (TUSF)), and ending balance; and

(2) Total disbursements from the TUSF to each recipient company or organization for each program described in §26.401(b) of this title.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.

Subchapter P. TEXAS UNIVERSAL SERVICE FUND.

§26.403. Texas High Cost Universal Service Plan (THCUSP).

(a) **Purpose.** This section establishes guidelines for financial assistance to eligible telecommunications providers (ETPs) that serve the high cost rural areas of the state, other than study areas of small and rural incumbent local exchange companies (ILECs), so that basic local telecommunications service may be provided at reasonable rates in a competitively neutral manner.

(b) **Application.** This section applies to telecommunications providers that have been designated ETPs by the commission pursuant to §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).

(c) **Definitions.** The following words and terms when used in this section shall have the following meaning unless the context clearly indicates otherwise:

(1) **Business line** -- The telecommunications facilities providing the communications channel that serves a single-line business customer's service address. For the purpose of this definition, a single-line business line is one to which multi-line hunting, trunking, or other special capabilities do not apply. For a line served by an ILEC, a business line is a line served pursuant to the ILEC's business service tariff or a package that includes such a tariffed service. For a line served by an ILEC pursuant to a customer specific contract or that is otherwise not served pursuant to a tariff, to qualify as a business line, the service must be provided pursuant to a customer application, subscriber agreement, or contract entered into by a public or private organization of any character, or a representative or agent of such entity, irrespective of the person or entity in actual possession of the telephone device. For a line that is served by an ETP other than an ILEC, to qualify as a business line, the service must be provided pursuant to a customer application, subscriber agreement, or contract entered into by a public or private organization of any character, or a representative or agent of such entity, irrespective of the person or entity in actual possession of the telephone device.

(2) **Eligible line** -- A residential line or a single-line business line over which an ETP provides the service supported by the THCUSP through its own facilities, purchase of unbundled network elements (UNEs), or a combination of its own facilities and purchase of UNEs. An eligible line may be a business line or a residential line but shall not be both.

(3) **Eligible telecommunications provider (ETP)** -- A telecommunications provider designated by the commission pursuant to §26.417 of this title.

(4) **Physical 911 address --** For the purposes of this section, a physical 911 address is an address transmitted to the applicable emergency service providers by an ETP with respect to a line that is not stated in GPS coordinates.

(5) **Residential line** -- The telecommunications facilities providing the communications channel that serves a residential customer's service address. For the purpose of this definition, a residential line is one to which multi-line hunting, trunking, or other special capabilities do not apply. A line that qualifies as a business line shall not qualify as a residential line.

(6) **Service Address** -- For the purposes of this section, a business or residential customer's service address is defined using the following criteria:

(A) A service address is the unique physical street address, including any suite or unit number, where a line is provided to a customer, except as provided in clauses (i)-(ii) and subparagraph (B) of this paragraph.

(i) If no unique physical street address is available, a physical 911 address shall be used.

(ii) If no unique physical street address and no physical 911 address are available, the business or residential customer's service address shall be an area of land under common operation or use as defined by a deed, state permit, lease name, or licensed or registered field of operation, which shall

be described by an ETP using GPS coordinates. Multiple buildings within a single area of land under common operation or use shall not qualify as separate service addresses, even if the GPS coordinates for each building are different.

(B) For eligible lines served using commercial mobile radio service, a service address for such a line may be the customer's billing address for the purposes of this definition.

(d) **Service to be supported by the THCUSP.** The THCUSP shall support basic local telecommunications services provided by an ETP in high cost rural areas of the state. Local measured residential service, if chosen by the customer and offered by the ETP, shall also be supported.

(1) **Initial determination of the definition of basic local telecommunications service.** Basic local telecommunications service shall consist of the following:

(A) flat rate, single party residential and business local exchange telephone service, including primary directory listings;

(B) tone dialing service;

(C) access to operator services;

(D) access to directory assistance services;

(E) access to 911 service where provided by a local authority;

(F) telecommunications relay service;

(G) the ability to report service problems seven days a week;

(H) availability of an annual local directory;

(I) access to toll services; and

(J) lifeline service.

(2) **Subsequent determinations.**

(A) Initiation of subsequent determinations.

(i) The definition of the services to be supported by the THCUSP shall be reviewed by the commission every three years from September 1, 1999.

(ii) The commission may initiate a review of the definition of the services to be supported on its own motion at any time.

(B) **Criteria to be considered in subsequent determinations.** In evaluating whether services should be added to or deleted from the list of supported services, the commission may consider the following criteria:

(i) the service is essential for participation in society;

(ii) a substantial majority, 75% of residential customers, subscribe to the service;

(iii) the benefits of adding the service outweigh the costs; and

(iv) the availability of the service, or subscription levels, would not increase without universal service support.

(e) **Criteria for determining amount of support under THCUSP**. The commission shall determine the amount of per-line support to be made available to ETPs in each eligible wire center. The amount of support available to each ETP shall be calculated using the base support amount as of the effective date of this section and applying the annual reductions as described in this subsection. As used in this subsection, "basic local telecommunications service" refers to services available to residential customers only, and "exchange" or "wire center" refer to regulated exchanges or wire centers only.

(1) **Determining base support amount available to ILEC ETPs**. The initial annual base support amount for an ILEC ETP shall be the annualized monthly THCUSP support amount for the month preceding the effective date of this section, less the 2011 amount of support disbursed to the ILEC ETP from the federal universal service fund for High Cost Loop, High Cost Model, Safety Net Additive, and Safety Valve components of the frozen high-cost support as determined by the Universal Service Administration Company pursuant to 47 C.F.R.

§54.312(a). The initial per-line monthly support amount for a wire center shall be the per-line support amount for the wire center for the month preceding the effective date of this section, less each wire center's pro rata share of one-twelfth of the 2011 amount of support disbursed to the ILEC ETP from the federal universal service fund for High Cost Loop, High Cost Model, Safety Net Additive, and Safety Valve components of the frozen high-cost support determined by the Universal Service Administration Company pursuant to 47 C.F.R §54.312(a). The initial annual base support amount shall be reduced annually as described in paragraph (3) of this subsection.

(2) **Determination of the reasonable rate**. The reasonable rate for basic local telecommunications service shall be determined by the commission in a contested case proceeding. To the extent that an ILEC ETP's existing rate for basic local telecommunications service in any wire center is less than the reasonable rate, the ILEC ETP may, over time, increase its rates for basic local telecommunications service to an amount not to exceed the reasonable rate. The increase to the existing rate shall not in any one year exceed an amount to be determined by the commission in the contested case proceeding. An ILEC ETP may, in its sole discretion, accelerate its THCUSP reduction in any year by as much as 10% and offset such reduction with a corresponding local rate increase in order to produce rounded rates. In no event shall any such acceleration obligate the ETP to reduce its THCUSP support in excess of the total reduction obligation initially calculated under paragraph (3) of this subsection.

(3) **Annual reductions to THCUSP base support and per-line support recalculation**. As part of the contested proceeding referenced in paragraph (2) of this subsection, each ILEC ETP shall, using line counts as of the end of the month preceding the effective date of this rule, calculate the amount of additional revenue that would result if the ILEC ETP were to charge the reasonable rate for basic local telecommunications service to all residential customers for those services where the price, or imputed price, are below the reasonable rate. Lines in exchanges for which an application for deregulation is pending as of June 1, 2012 shall not be included in this calculation. If the application for deregulation for any such exchanges subsequently is denied by the commission, the ILEC ETP shall, within 20 days of the final order denying such application, submit revised calculations including the lines in those exchanges for which the application for deregulation was denied. Without regard to whether an ILEC ETP increases its rates for basic local telecommunications service to the reasonable rate, the ILEC ETP's annual base support shall be reduced on January 1 of each year for four consecutive years, with the first reduction occurring on January 1, 2013. The ETP's annual base support amount shall be reduced by 25% of the additional revenue calculated pursuant to this paragraph in each year of the transition period. This reduction shall be accomplished by reducing support for each wire center served by the ETP proportionally.

(4) **Portability**. The support amounts established pursuant to this section are applicable to all ETPs and are portable with the customer.

(5) **Limitation on availability of THCUSP support.**

(A) THCUSP support shall not be provided in a wire center in a deregulated market that has a population of at least 30,000.

(B) An ILEC may receive support from the THCUSP for a wire center in a deregulated market that has a population of less than 30,000 only if the ILEC demonstrates to the commission that the ILEC needs the support to provide basic local telecommunications service at reasonable rates in the affected market. An ILEC may use evidence from outside the wire center at issue to make the demonstration. An ILEC may make the demonstration for a wire center before or after submitting a petition to deregulate the market in which the wire center is located.

(6) **Total Support Reduction Plan**. Within 10 days of the effective date of this section, an ILEC may elect to participate in a Total Support Reduction Plan (TSRP) as prescribed in this subsection, by filing a notification of such participation with the commission. The TSRP

would serve as an alternative to the reduction plan prescribed in paragraph (3) of this subsection. The TSRP will be implemented as follows:

(A) For an ILEC making this election, the ILEC shall reduce its THCUSP funding in accordance with paragraph (3) of this subsection with the exception that THCUSP reductions due to exchange deregulation may be credited against the electing ILEC's annual reduction obligation in the calendar year immediately following such deregulation.

(B) In no event shall an electing ILEC seek or receive THCUSP funding after January 1, 2017 even if it would otherwise be entitled to such funding as of this date.

(f) **Support Reduction**. Subject to the provisions of §26.405(f)(3) of this title (relating to Financial Need for Continued Support), the commission shall adjust the support to be made available from the THCUSP according to the following criteria.

(1) For each ILEC that is not electing under subsection (e)(6) of this section and that served greater than 31,000 access lines in this state on September 1, 2013, or a company or cooperative that is a successor to such an ILEC, the monthly per-line support that the ILEC is eligible to receive for each exchange on December 31, 2016 from the THCUSP is reduced:

(A) on January 1, 2017, to 75 percent of the level of support the ILEC is eligible to receive on December 31, 2016;

(B) on January 1, 2018, to 50 percent of the level of support the ILEC is eligible to receive on December 31, 2016; and

(C) on January 1, 2019, to 25 percent of the level of support the ILEC is eligible to receive on December 31, 2016.

(2) An ILEC subject to this subsection may file a petition to show financial need for continued support, pursuant to §26.405(f)(1) of this title, on or before January 1, 2019.

(g) **Reporting requirements**. An ETP that receives support pursuant to this section shall report the following information:

(1) **Monthly reporting requirement.** An ETP shall report the following to the TUSF administrator on a monthly basis:

(A) the total number of eligible lines for which the ETP seeks TUSF support; and

(B) a calculation of the base support computed in accordance with the requirements of subsection (d) of this section.

(2) **Quarterly filing requirements.** An ETP shall file quarterly reports with the commission showing actual THCUSP receipts by study area.

(A) Reports shall be filed electronically in the project number assigned by the commission's central records office no later than 3:00 p.m. on the 30th calendar day after the end of the calendar quarter reporting period.

(B) Each ETP's reports shall be filed on an individual company basis; reports that aggregate the disbursements received by two or more ETPs will not be accepted as complying with the requirements of this paragraph.

(C) All reports filed pursuant to paragraph (3) of this subsection shall be publicly available.

(3) **Annual reporting requirements.** An ETP shall report annually to the TUSF administrator that it is qualified to participate in the THCUSP.

(4) **Other reporting requirements.** An ETP shall report any other information that is required by the commission or the TUSF administrator, including any information necessary to assess contributions and disbursements from the TUSF.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.

Subchapter P. TEXAS UNIVERSAL SERVICE FUND.

§26.404. Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan.

(a) **Purpose.** This section establishes guidelines for financial assistance to eligible telecommunications providers (ETPs) that provide service in the study areas of small and rural ILECs in the state so that basic local telecommunications service or its equivalent may be provided at reasonable rates in a competitively neutral manner.

(b) **Application.**

(1) **Small or rural ILECs.** This section applies to small ILECs, as defined in subsection (c) of this section, and to rural ILECs, as defined in §26.5 of this title (relating to Definitions), that have been designated ETPs.

(2) **Other ETPs providing service in small or rural ILEC study areas.** This section applies to telecommunications providers other than small or rural ILECs that provide service in small or rural ILEC study areas that have been designated ETPs.

(c) **Definitions.** The following words and terms when used in this section shall have the following meaning unless the context clearly indicates otherwise:

(1) **Business line** -- The telecommunications facilities providing the communications channel that serves a single-line business customer's service address. For the purpose of this definition, a single-line business line is one to which multi-line hunting, trunking, or other special capabilities do not apply. For a line served by an ILEC, a business line is a line served pursuant to the ILEC's business service tariff or a package that includes such a tariffed service. For a line served by an ILEC pursuant to a customer specific contract or that is otherwise not served pursuant to a tariff, to qualify as a business line, the service must be provided pursuant to a customer application, subscriber agreement, or contract entered into by a public or private organization of any character, or a representative or agent of such entity, irrespective of the person or entity in actual possession of the telephone device. For a line that is served by an ETP other than an ILEC, to qualify as a business line, the service must be provided pursuant to a customer application, subscriber agreement, or contract entered into by a public or private organization of any character, or a representative or agent of such entity, irrespective of the person or entity in actual possession of the telephone device.

(2) **Eligible line --** A residential line or a single-line business line over which an ETP provides the service supported by the Small and Rural ILEC Universal Service Plan (SRILEC USP) through its own facilities, purchase of unbundled network elements (UNEs), or a combination of its own facilities and purchase of UNEs. An eligible line may be a business line or a residential line but shall not be both.

(3) **Eligible telecommunications provider (ETP) --** A telecommunications provider designated by the commission pursuant to §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).

(4) **Physical 911 address --** For the purposes of this section, a physical 911 address is an address transmitted to the applicable emergency service providers by an ETP with respect to a line that is not stated in GPS coordinates.

(5) **Residential line** -- The telecommunications facilities providing the communications channel that serves a residential customer's service address. For the purpose of this definition, a residential line is one to which multi-line hunting, trunking, or other special capabilities do not apply. A line that qualifies as a business line shall not qualify as a residential line.

(6) **Service Address** -- For the purposes of this section, a business or residential customer's service address is defined using the following criteria:

(A) A service address is the unique physical street address, including any suite or unit number, where a line is provided to a customer, except as provided in clauses (i)-(ii) and subparagraph (B) of this paragraph.

(i) If no unique physical street address is available, a physical 911 address shall be used.

(ii) If no unique physical street address and no physical 911 address are available, the business or residential customer's service address shall be an area of land under common operation or use as defined by a deed, state permit, lease name, or licensed or registered field of operation, which shall be described by an ETP using GPS coordinates. Multiple buildings within a single area of land under common operation or use shall not qualify as separate service addresses, even if the GPS coordinates for each building are different.

(B) For eligible lines served using commercial mobile radio service, a service address for such a line may be the customer's billing address for the purposes of this definition.

(7) **Small incumbent local exchange company** -- An incumbent local exchange (ILEC) that qualifies as a "small local exchange company" as defined in the Public Utility Regulatory Act (PURA), §53.304(a)(1).

(d) **Service to be supported by the Small and Rural ILEC Universal Service Plan.** The Small and Rural ILEC Universal Service Plan shall support the provision by ETPs of basic local telecommunications service as defined in §26.403(d) of this title (relating to Texas High Cost Universal Service Plan (THCUSP)) and is limited to those services carried on all residential lines and the first five single-line business lines at a business customer's service address for which a flat rate plan is an available option.

(e) **Criteria for determining amount of support under Small and Rural ILEC Universal Service Plan.** The commission shall determine the amount of per-line support to be made available to ETPs in each eligible study area. The amount of support available to each ETP shall be calculated using the small and rural ILEC ETP base support amount and applying the annual reductions as described in this subsection.

(1) **Determining base support amount available to ETPs.** The initial per-line monthly base support amount for a small or rural ILEC ETP shall be the per-line monthly support amount for each small or rural ILEC ETP study area as specified in Docket Number 18516, annualized by using the small or rural ILEC ETP access line count as of January 1, 2012. The initial per-line monthly base support amount shall be reduced as described in paragraph (3) of this subsection.

(2) **Determination of the reasonable rate**.

(A) The reasonable rate for basic local telecommunications service shall be determined by the commission in a contested case proceeding. An increase to an existing rate shall not in any one year exceed an amount to be determined by the commission in the contested case proceeding**.**

(B) The length of the transition period applicable to the reduction in support calculated under paragraph (3) of this subsection shall be determined in the contested case proceeding.

(3) **Annual reductions to the Small and Rural ILEC Universal Service Plan per-line support**. As part of the contested case proceeding referenced in paragraph (2) of this subsection, for each small or rural ILEC ETP, the commission shall calculate the amount of additional revenue, using the basic telecommunications service rate (the tariffed local service rate plus any additional charges for tone dialing services, mandatory expanded local calling service and mandatory extended area service) and the access line count as of September 1, 2013, would result if the small and rural ILEC ETP were to charge the reasonable rate for basic local telecommunications service to all residential customers. Without regard to whether a small or rural ILEC ETP increases its rates for basic local telecommunications service to the reasonable rate, the small or rural ILEC ETP's annual base support amount for each study area shall be

reduced on January 1 of each year for four consecutive years, with the first reduction occurring on January 1, 2014. The small or rural ILEC ETP's annual base support amount shall be reduced by 25% of the additional revenue calculated pursuant to this paragraph in each year of the transition period, unless specified otherwise pursuant to paragraph (2)(B) of this subsection. This reduction shall be accomplished by reducing support for each study area proportionally. An ILEC ETP may, in its sole discretion, accelerate its SRILEC USP reduction in any year by as much as 10% and offset such reductions with a corresponding local rate increase in order to produce rounded rates.

(f) **Small and Rural ILEC Universal Service Plan support payments to ETPs.** The TUSF administrator shall disburse monthly support payments to ETPs qualified to receive support pursuant to this section.

(1) **Payments to small or rural ILEC ETPs.** The payment to each small or rural ILEC ETP shall be computed by multiplying the per-line amount established in subsection (e) of this section by the number of eligible lines served by the small or rural ILEC ETP for the month.

(2) **Payments to ETPs other than small or rural ILECs.** The payment to each ETP other than a small or rural ILEC shall be computed by multiplying the per-line amount established in subsection (e) of this section for a given small or rural ILEC study area by the number of eligible lines served by the ETP in such study area for the month.

(g) **Support Reduction**. Subject to the provisions of §26.405(f)(3) of this title (relating to Financial Need for Continued Support), the commission shall adjust the support to be made available from the SRILEC USP according to the following criteria.

(1) For each ILEC ETP that is electing under PURA, Chapter 58 or 59 or a cooperative that served greater than 31,000 access lines in this state on September 1, 2013, or a company or cooperative that is a successor to such an ILEC, the monthly per-line support that the ILEC ETP is eligible to receive for each exchange on December 31, 2017 from the SRILEC USP is reduced:

(A) on January 1, 2018, to 75 percent of the level of support the ILEC ETP is eligible to receive on December 31, 2017;

(B) on January 1, 2019, to 50 percent of the level of support the ILEC ETP is eligible to receive on December 31, 2017; and

(C) on January 1, 2020, to 25 percent of the level of support the ILEC ETP is eligible to receive on December 31, 2017.

(2) An ILEC ETP subject to this subsection may file a petition to show financial need for continued support, pursuant to §26.405(f)(1) of this title, on or before January 1, 2020.

(h) **Reporting requirements.** An ETP eligible to receive support under this section shall report information as required by the commission and the TUSF administrator.

(1) **Monthly reporting requirement.** An ETP shall report the following to the TUSF administrator on a monthly basis:

(A) the total number of eligible lines for which the ETP seeks SRILEC USP support; and

(B) a calculation of the base support computed in accordance with the requirements of subsection (e) of this section.

(2) **Quarterly filing requirements.** An ETP shall file quarterly reports with the commission showing actual SRILEC USP receipts by study area.

(A) Reports shall be filed electronically in the project number assigned by the commission's central records office no later than 3:00 p.m. on the 30th calendar day after the end of the calendar quarter reporting period.

(B) Each ETP's reports shall be filed on an individual company basis; reports that aggregate the disbursements received by two or more ETPs will not be accepted as complying with the requirements of this paragraph.

(C) All reports filed pursuant to paragraph (3) of this subsection shall be publicly available.

(3) **Annual reporting requirements.** An ETP shall report annually to the TUSF administrator that it is qualified to participate in the Small and Rural ILEC Universal Service Plan.

(4) **Other reporting requirements.** An ETP shall report any other information that is required by the commission or the TUSF administrator, including any information necessary to assess contributions and disbursements from the TUSF.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.

Subchapter P. TEXAS UNIVERSAL SERVICE FUND.

§26.405. Financial Need for Continued Support.

(a) **Purpose.** This section establishes criteria to demonstrate financial need for continued support for the provision of basic local telecommunications service under the Texas High Cost Universal Service Plan (THCUSP) and the Small and Rural Incumbent Local Exchange Company Universal Service Plan (SRILEC USP). This section also establishes the process by which the commission will evaluate petitions to show financial need and will set new monthly per-line support amounts.

(b) **Application.** This section applies to an incumbent local exchange company (ILEC) that is subject to §26.403(f) of this title (relating to the Texas High Cost Universal Service Plan (THCUSP)) or §26.404(g) of this title (relating to the Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan).

(c) **Definitions.** The following words and terms when used in this section shall have the following meaning unless the context clearly indicates otherwise:

(1) **Business line** -- The telecommunications facilities providing the communications channel that serves a single-line business customer's service address. For the purpose of this definition, a single-line business line is one to which multi-line hunting, trunking, or other special capabilities do not apply. For a line served by an ILEC, a business line is a line served pursuant to the ILEC's business service tariff or a package that includes such a tariffed service. For a line served by an ILEC pursuant to a customer specific contract or that is otherwise not served pursuant to a tariff, to qualify as a business line, the service must be provided pursuant to a customer application, subscriber agreement, or contract entered into by a public or private organization of any character, or a representative or agent of such entity, irrespective of the person or entity in actual possession of the telephone device. For a line that is served by an ETP other than an ILEC, to qualify as a business line, the service must be provided pursuant to a customer application, subscriber agreement, or contract entered into by a public or private organization of any character, or a representative or agent of such entity, irrespective of the person or entity in actual possession of the telephone device.

(2) **Eligible line** -- A residential line or a single-line business line over which an ETP provides the service supported by the THCUSP or SRILEC USP through its own facilities, purchase of unbundled network elements (UNEs), or a combination of its own facilities and purchase of UNEs. An eligible line may be a business line or a residential line but shall not be both.

(3) **Eligible telecommunications provider (ETP)** -- A telecommunications provider designated by the commission pursuant to §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).

(4) **Physical 911 address --** For the purposes of this section, a physical 911 address is an address transmitted to the applicable emergency service providers by an ETP with respect to a line that is not stated in GPS coordinates.

(5) **Residential line** -- The telecommunications facilities providing the communications channel that serves a residential customer's service address. For the purpose of this definition, a residential line is one to which multi-line hunting, trunking, or other special capabilities do not apply. A line that qualifies as a business line shall not qualify as a residential line.

(6) **Service Address** -- For the purposes of this section, a business or residential customer's service address is defined using the following criteria:

(A) A service address is the unique physical street address, including any suite or unit number, where a line is provided to a customer, except as provided in clauses (i)-(ii) and subparagraph (B) of this paragraph.

(i) If no unique physical street address is available, a physical 911 address shall be used.

(ii) If no unique physical street address and no physical 911 address are available, the business or residential customer's service address shall be an area of land under common operation or use as defined by a deed, state permit, lease name, or licensed or registered field of operation, which shall be described by an ETP using GPS coordinates. Multiple buildings within a single area of land under common operation or use shall not qualify as separate service addresses, even if the GPS coordinates for each building are different.

(B) For eligible lines served using commercial mobile radio service, a service address for such a line may be the customer's billing address for the purposes of this definition.

(d) **Determination of financial need**.

(1) **Criteria to determine financial need**. For each exchange that is served by an ILEC ETP filing a petition pursuant to subsection (f)(1) of this section, the commission shall determine whether an ILEC ETP has a financial need for continued support. An ILEC ETP has a financial need for continued support within an exchange if the exchange does not contain an unsubsidized wireline voice provider competitor as set forth in paragraph (2) of this subsection.

(2) **Establishing the existence of an unsubsidized wireline voice provider competitor.** For the purposes of this section, an exchange contains an unsubsidized wireline voice provider competitor if the percentage of square miles served by an unsubsidized wireline voice provider competitor exceeds 75% of the square miles within the exchange. The commission shall determine whether an exchange contains an unsubsidized wireline voice provider competitor using the following criteria.

(A) For the purposes of this section, an entity is an unsubsidized wireline voice provider competitor within an exchange if it:

(i) does not receive THCUSP support, SRILEC USP support, Federal Communications Commission (FCC) Connect America Fund (CAF) support, or FCC Legacy High Cost support for service provided within that exchange; and

(ii) offers basic local service or broadband service of 3 megabits per second down and 768 kilobits per second up using wireline-based technology using either its own facilities or a combination of its own facilities and purchased unbundled network elements (UNEs).

(B) Using Version 7 of the National Broadband Map, the commission shall determine the census blocks served by an unsubsidized wireline voice provider competitor within a specific exchange and the total number of square miles represented by those census blocks using the following criteria.

(i) The number of square miles served by an unsubsidized wireline voice provider competitor within an exchange shall be equal to the total square mileage covered by census blocks in the exchange in which an unsubsidized wireline voice provider competitor offers service to any customer or customers.

(ii) The commission shall determine the percentage of square miles served by an unsubsidized wireline voice provider competitor within an exchange by dividing the number of square miles served by an unsubsidized wireline voice provider competitor within the exchange by the number of square miles within the exchange.

(C) The data provided by the National Broadband Map creates a rebuttable presumption regarding the presence of an unsubsidized wireline voice provider competitor within a specific census block. However, nothing in this rule is intended to preclude a party from providing evidence as to the accuracy of individual census block data within the

National Broadband Map with regard to whether an unsubsidized wireline voice provider competitor offers service within a particular census block.

(e) **Criteria for determining amount of continued support**. In a proceeding conducted pursuant to subsection (f) of this section, the commission shall set new monthly per-line support amounts for each exchange served by a petitioning ILEC ETP. The new monthly per-line support amounts shall be effective beginning with the first disbursement following a commission order entered pursuant to subsection (f)(2) of this section, except that they shall not be effective earlier than January 1, 2017 for an exchange with service supported by the THCUSP or earlier than January 1, 2018 for an exchange with service supported by the SRILEC USP.

(1) **Exchanges in which the ILEC ETP does not have a financial need for continued support.** For each exchange that is served by an ILEC ETP that has filed a petition pursuant to subsection (f)(1) of this section and for which the commission has not determined that the ILEC ETP has a financial need for continued support, the commission shall reduce the monthly per-line support amount to zero. For each exchange that is served by an ILEC ETP that has filed a petition pursuant to subsection (f)(1) of this section and which is not included in the petition, the commission shall reduce the monthly per-line support amount to zero.

(2) **Exchanges in which the ILEC ETP has a financial need for continued support.** For each exchange that is served by an ILEC ETP that has filed a petition pursuant to subsection (f)(1) of this section and for which the commission has determined the ILEC ETP has a financial need for continued support, the commission shall set a monthly per-line support amount according to the following criteria.

(A) The initial monthly per-line support amounts for each exchange shall be equal to:

(i) the amount that the ILEC ETP was eligible to receive on December 31, 2016 for an ILEC ETP that receives support from the THCUSP;

(ii) the amount that the ILEC ETP was eligible to receive on December 31, 2017 for an ILEC ETP that receives support from the SRILEC USP and that has not filed a request pursuant to subsection (g) of this section; or

(iii) the new monthly per-line support amounts calculated pursuant to subsection (g) of this section for an ILEC ETP that has filed a request pursuant to subsection (g) of this section.

(B) Initial monthly per-line support amounts for each exchange shall be reduced by the extent to which the disbursements received by an ILEC ETP from the THCUSP or SRILEC USP in the twelve month period ending with the most recently completed calendar quarter prior to the filing of a petition pursuant to subsection (f)(1) of this section are greater than 80% of the total amount of expenses reflected in the summary of expenses filed pursuant to subsection (f)(1)(C) of this section. In establishing any reductions to the initial monthly per-line support amounts, the commission may consider any appropriate factor, including the residential line density per square mile of any affected exchanges.

(C) For each exchange with service supported by the THCUSP, monthly per-line support shall not exceed:

(i) the monthly per-line support that the ILEC ETP was eligible to receive on December 31, 2016, if the petition was filed before January 1, 2016;

(ii) 75 percent of the monthly per-line support that the ILEC ETP was eligible to receive on December 31, 2016, if the petition was filed on or after January 1, 2016, and before January 1, 2017;

(iii) 50 percent of the monthly per-line support the ILEC ETP was eligible to receive on December 31, 2016, if the petition was filed on or after January 1, 2017, and before January 1, 2018; or

(iv) 25 percent of the monthly per-line support that the ILEC ETP was eligible to receive on December 31, 2016, if the petition was filed on or after January 1, 2018, and before January 1, 2019.

(D) For each exchange with service supported by the SRILEC USP, monthly per-line support shall not exceed:

(i) the monthly per-line support that the ILEC ETP was eligible to receive on December 31, 2017, if the petition was filed before January 1, 2017;

(ii) 75 percent of the monthly per-line support that the ILEC ETP was eligible to receive on December 31, 2017, if the petition was filed on or after January 1, 2017, and before January 1, 2018;

(iii) 50 percent of the monthly per-line support the ILEC ETP was eligible to receive on December 31, 2017, if the petition was filed on or after January 1, 2018, and before January 1, 2019; or

(iv) 25 percent of the monthly per-line support that the ILEC ETP was eligible to receive on December 31, 2017, if the petition was filed on or after January 1, 2019, and before January 1, 2020.

(E) An ILEC ETP may only be awarded continued support for the provision of service in exchanges with service that is eligible for support from the THCUSP or SRILEC USP at the time of filing of a petition pursuant to subsection (f)(1) of this section.

(F) **Portability of support.** The support amounts established pursuant to this section are applicable to all ETPs and are portable with the customer.

(f) **Proceeding to Determine Financial Need and Amount of Support.**

(1) **Petition to determine financial need.** An ILEC ETP that is subject to §26.403(f) or §26.404(g) of this title may petition the commission to initiate a contested case proceeding to demonstrate that it has a financial need for continued support for the provision of basic local telecommunications service.

(A) An ILEC ETP may only file one petition pursuant to this subsection. A petition filed pursuant to this subsection shall include the information necessary to reach the determinations specified in this subsection.

(B) An ILEC ETP filing a petition pursuant to this subsection shall provide notice as required by the presiding officer pursuant to §22.55 of this title (relating to Notice in Other Proceedings). At a minimum, notice shall be published in the *Texas Register*.

(C) A petition filed pursuant to this subsection shall include a summary of the following total Texas regulated expenses and property categories, including supporting workpapers, attributable to the ILEC ETP's exchanges with service supported by the THCUSP or SRILEC USP during the twelve month period ending with the most recently completed calendar quarter prior to the filing of the petition:

(i) Plant-specific operations expense;

(ii) Plant non-specific operations expense;

(iii) Customer operations expense;

(iv) Corporate operations expense;

(v) Depreciation and amortization expenses;

(vi) Other operating expenses;

(vii) Total telecom plant in service;

(viii) Total property held for future use; and

(ix) Total telecom plant under construction.

(D) A summary filed pursuant to this subsection shall be filed publicly. Workpapers filed pursuant to this subsection may be filed publicly or under seal.

(E) Upon receipt of a petition pursuant to this section, the commission shall initiate a contested case proceeding to determine whether the ILEC ETP has a financial need

for continued support under this section for the exchanges identified in the petition. In the same proceeding, the commission shall set a new monthly per-line support amount for all exchanges served by the ILEC ETP.

(2) The commission shall issue a final order in the proceeding not later than the 330th day after the date the petition is filed with the commission. Until the commission issues a final order on the proceeding, the ILEC ETP shall continue to receive the total amount of support it was eligible to receive on the date the ILEC ETP filed a petition under this subsection.

(3) An ILEC ETP shall not be subject to §26.403(f) or §26.404(g) of this title after the commission issues a final order on the petition.

(4) The ILEC ETP filing a petition pursuant to this subsection shall bear the burden of proof with respect to all issues that are in the scope of the proceeding.

(g) **De-averaging of the support received by ILEC ETPs from the SRILEC USP.** On or before January 1, 2017, an ILEC ETP filing a petition pursuant to subsection (f)(1) of this section and that receives support from the SRILEC USP may include in its petition a request that the commission determine for each exchange served by the ILEC ETP new monthly per-line support amounts that the ILEC ETP will be eligible to receive on December 31, 2017. The new monthly per-line support amounts will be calculated using the following methodology.

(1) The commission shall use per-line proxy support levels based on the following ranges of average residential line density per square mile within an individual exchange. These proxies are used specifically for the purpose of de-averaging and do not indicate a preference that support at these levels be provided from the SRILEC USP.

Residential Line Density Per Square Mile	Proxy Per-Line Support Amount
0 to 2.49	$120.53
2.49 to 4.99	$69.82
5 to 9.99	$46.46
10 to 14.99	$31.45
15 to 19.99	$18.81
20 to 24.99	$14.78
25 to 29.99	$10.51
30 to 49.99	$4.33
50 or greater	$1.83

(2) Using the per-line proxy support amount levels set forth in this subsection, the commission shall create a benchmark support amount for each exchange of a requesting ILEC ETP. The benchmark support amount for each individual supported exchange of a company or cooperative is calculated by multiplying the number of total eligible lines as of December 31, 2016 served by the ILEC ETP within each exchange by the corresponding proxy support amount for that individual exchange based on the average residential line density per square mile of the exchange as of December 31, 2016.

(3) To the extent that the total sum of the benchmark support amounts for all of the supported exchanges of a company or cooperative is greater than or less than the targeted total support amount a company or cooperative would be eligible to receive on December 31, 2017 as a result of the final order in Docket No. 41097, the benchmark per-line support amount for each exchange shall be proportionally reduced or increased by the same percentage amount so that the total support amount a company or cooperative is eligible to receive on December 31, 2017, as a result of the final order in Docket No. 41097, is unaffected by the de-averaging process.

(4) The per-line support amount that a company or cooperative is eligible to receive in a specific exchange on December 31, 2017, for purposes of a petition filed pursuant to subsection (f)(1)

of this section, is the per-line support amount for each exchange determined through the de-averaging process set forth in this subsection.

(h) **Reporting requirements.** An ILEC ETP that receives support pursuant to this section shall remain subject to the reporting requirements of §26.403(g) or §26.404(h) of this title.

(i) **Additional Financial Assistance.** Nothing in this section shall be interpreted to prohibit an ILEC or cooperative that is not an electing company under Chapter 58, 59, or 65 of PURA to apply for Additional Financial Assistance pursuant to §26.408 of this title (relating to Additional Financial Assistance (AFA)).

(j) **Service to be supported.** The services to be supported pursuant to the section are subject to the same definitions and limitations as those set out in §26.403(d) and §26.404(d) of this title, in addition to any limitation ordered by the commission in a contested case proceeding.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter P. TEXAS UNIVERSAL SERVICE FUND.

§26.406. Implementation of the Public Utility Regulatory Act §56.025.

(a) **Purpose.** The purpose of this section is to implement the provisions of the Public Utility Regulatory Act (PURA) §56.025.

(b) **Applicability.** An incumbent local exchange company (ILEC) serving fewer than 31,000 access lines and each cooperative may seek to recover funds from the Texas Universal Service Fund (TUSF) under this section in the following circumstances:

(1) **Commission reduction in the amount of high cost assistance fund.** In the event of a commission order, rule, or policy, the effect of which is to reduce the amount of the high cost assistance fund support received by the ILEC as of February 10, 1998, except an order entered in an individual company revenue requirement proceeding, the commission shall allow, through the universal service fund, an ILEC to replace the reasonably projected reduction in revenues caused by that regulatory action.

(2) **Change in federal universal service fund revenues.** In the event of a Federal Communications Commission order, rule, or policy, the effect of which is to change the federal universal service fund revenues of an ILEC or change costs or revenues assigned to the intrastate jurisdiction, the commission shall, through either the universal service fund or an increase to rates if that increase would not adversely impact universal service, replace the reasonably projected change in revenues caused by the regulatory action.

(3) **Commission change in intraLATA dialing access policy.** In the event of a commission change in its policy with respect to intraLATA "1+" dialing access, the commission shall, through either the universal service fund or an increase to rates if that increase would not adversely impact universal service, replace the reasonably projected reduction in contribution caused by the action. Contribution for purposes of this paragraph equals average intraLATA long distance message telecommunications service (MTS) revenue, including intraLATA toll pooling and associated impacts, per minute less average MTS cost per minute less the average contribution from switched access times the projected change in intraLATA "1+" minutes of use.

(4) **Other governmental agency action.** In the event of any other governmental agency issuing an order, rule, or policy, the effect of which is to increase costs or decrease revenues of the intrastate jurisdiction, the commission shall, through either the universal service fund or an increase to rates, if that increase would not adversely impact universal service, replace the reasonably projected increase in costs or decrease in revenues caused by that regulatory action.

(c) **Requirements of the ILEC.**

(1) **Burden of proof.** The ILEC seeking to recover funds from the TUSF under this section has the burden of proof. A revenue requirement showing is not required with respect to disbursements from the TUSF under this section.

(2) **Contents of application.** The ILEC seeking to recover funds from the TUSF under this section shall file an application:

(A) complying with the commission's Procedural Rules §22.73 of this title (relating to General Requirements for Applications); and

(B) providing the amount requested from the TUSF under this section, the calculation of the amount requested, and detailed documentation and workpapers supporting the calculations.

(3) **Notice.** The ILEC seeking to recover funds from the TUSF under this section shall provide notice as required by the presiding officer pursuant to the commission's Procedural Rules §22.55 of this title (relating to Notice in Other Proceedings). At a minimum, the notice shall state that the ILEC is requesting to recover funds from the TUSF under this section and the Public Utility Regulatory Act §56.025 and state the amount the ILEC is requesting to recover. At a minimum, the notice shall be published in the *Texas Register*.

(d) **Commission processing of the application.**

(1) The application shall be processed under the commission's Procedural Rules.

(2) The commission shall process applications under this section promptly and efficiently.

(e) **Reporting requirements.** An ILEC awarded support under this section shall provide the TUSF administrator a copy of the commission's final order indicating the amount of support it is to receive under this section.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter P. TEXAS UNIVERSAL SERVICE FUND.

§26.408. Additional Financial Assistance (AFA).

(a) **Purpose**. Incumbent local exchange companies (ILECs) serving high cost and rural areas of the state may require financial assistance, in addition to the funds provided by §26.403 of this title (relating to Texas High Cost Universal Service Plan (THCUSP)), by §26.404 of this title (relating to Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan), or by §26.406 of this title (relating to the Implementation of the Public Utility Regulatory Act §56.025), so that these carriers may provide basic local exchange service at reasonable rates. This section establishes guidelines for requesting Additional Financial Assistance (AFA) from the Texas Universal Service Fund (TUSF).

(b) **Application.** Any ILEC that has been designated by the commission as an eligible telecommunications provider (ETP) and is not an electing company under the Public Utility Regulatory Act (PURA) Chapter 58, 59 or 65, may request AFA in a PURA §§53.105, 53.151, or 53.306 proceeding.

(c) **Establishment of AFA need.** The commission may approve an ILEC's AFA request if the commission finds:

(1) that the ILEC has fulfilled the appropriate requirements under PURA §§53.105, 53.151, or 53.306; and

(2) that raising the ILEC's rates for basic local telecommunications service, as defined in §26.403 of this title, would adversely affect universal service in such ILEC's certificated service area.

(d) **Reporting requirements.** Any ILEC awarded AFA support pursuant to this section through a commission proceeding shall provide the TUSF administrator with a copy of the final order indicating the amount of support.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter P. TEXAS UNIVERSAL SERVICE FUND.

§26.410. Universal Service Fund Reimbursement for Certain IntraLATA Service.

(a) **Purpose.** The purpose of this section is to implement the provisions of the Public Utility Regulatory Act (PURA) §56.028.

(b) **Applicability.** Under this section, an incumbent local exchange company (ILEC) that is not an electing company under PURA Chapters 58 and 59 may request reimbursement through the Texas Universal Service Fund (TUSF) when providing intraLATA interexchange high capacity (1.544 Mbps) service at reduced rates for entities described in PURA §58.253(a).

(c) **Reimbursement.** Reimbursement shall be retroactive to the date on which a non-electing ILEC's tariff containing the reduced rate was approved by the commission, or September 1, 1999, whichever is later. The amount of reimbursement shall be the difference between the ILEC's tariffed rate for that service, less any applicable discounts, and the lowest rate for that service offered by any local exchange company electing incentive regulation under PURA Chapter 58, multiplied by the number of eligible lines. The non-electing ILEC's rate for purposes of reimbursement shall be the rate effective on January 1, 1998. A non-electing ILEC without a tariffed rate on January 1, 1998, shall use the rate most recently approved by the commission.

(d) **Reporting requirements**.

(1) An ILEC awarded support under this section shall provide the TUSF administrator:

(A) the number of lines eligible for support; and

(B) the ILEC's tariffed rate, as of January 1, 1998, for the service; and

(C) the lowest rate offered for the service by any local exchange company electing incentive regulation under PURA Chapter 58.

(2) Upon request of the commission, the ILEC awarded support under this section shall designate the basis on which it is establishing rates.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter P. TEXAS UNIVERSAL SERVICE FUND.

§26.412. Lifeline Service Program.

(a) **Scope and purpose.** Through this section, the commission seeks to identify and make available Lifeline Service to all qualifying customers and households, establish a procedure for Lifeline Automatic Enrollment and Lifeline Self-Enrollment, and define the responsibilities of all providers of local exchange telephone service that provide Lifeline Service, qualified customers, the Texas Health and Human Services Commission (HHSC), and the Low-Income Discount Administrator (LIDA) Program.

(b) **Applicability.** This section applies to the following providers of local exchange telephone service collectively referred to in this section as Lifeline providers:

(1) ETC -- A carrier designated as such by a state commission pursuant to 47 C.F.R. §54.201 and §26.418 of this title (relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds) or a carrier designated as an ETC by the FCC pursuant to 47 C.F.R. §54.201.

(2) ETP -- A provider designated as an ETP as defined by §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).

(3) Resale ETP (R-ETP) -- A certificated provider that provides local exchange telephone service solely through the resale of an incumbent local exchange carrier's service and that has been designated as a R-ETP as defined by §26.419 of this title (relating to Telecommunication Resale Providers Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF) for Lifeline Service).

(4) Non-ETP/ETC Certificated Provider -- Any certificated provider of local exchange telephone service that chooses not to become an ETP or an ETC as defined by §§26.417, 26.418, or 26.419 of this title.

(c) **Definitions.**

(1) Qualifying low-income customer -- A customer who meets the qualifications for Lifeline Service, as specified in subsection (d) of this section.

(2) Toll blocking -- A service provided by Lifeline providers that let customers elect not to allow the completion of outgoing toll calls from their telephone.

(3) Toll control -- A service provided by Lifeline providers that allow customers to specify a certain amount of toll usage that may be incurred on their telephone account per month or per billing cycle.

(4) Toll limitation -- Denotes either toll blocking or toll control for Lifeline providers that are incapable of providing both services. For Lifeline providers that are capable of providing both services, "toll limitation" denotes both toll blocking as defined in paragraph (2) of this subsection and toll control as defined in paragraph (3) of this subsection.

(5) Eligible resident of Tribal lands -- A "qualifying low-income customer," as defined in paragraph (1) of this subsection, living on Tribal lands, as defined in 47 C.F.R. §54.400.

(6) Income -- As defined in 47 C.F.R. §54.400 includes all income actually received by all members of the household. This includes salary before deductions for taxes, public assistance benefits, social security payments, pensions, unemployment compensation, veteran's benefits, inheritances, alimony, child support payments, worker's compensation benefits, gifts, lottery winnings, and the like. The only exceptions are student financial aid, military housing and cost-of-living allowances, irregular income from occasional small jobs such as baby-sitting or lawn mowing, and the like.

(d) **Customer Eligibility Requirements.** A customer is eligible for Lifeline Service if they meet one of the criteria of paragraph (1), (2), or (3) of this subsection as determined by the Low-Income Discount Administrator (LIDA). Nothing in this section shall prohibit a customer otherwise eligible to receive Lifeline Service from obtaining and using telecommunications equipment or services designed to aid such customer in utilizing qualifying telecommunications services.

(1) The customer's household income is at or below 150% of the federal poverty guidelines as published by the United States Department of Health and Human Services and updated annually;

(2) A customer who receives benefits from or has a child that resides in the customer's household who receives benefits from any of the following programs qualifies for Lifeline Services: Medicaid, Supplemental Nutrition Assistance Program (SNAP), Supplemental Security Income (SSI), Federal Public Housing Assistance, Low Income Home Energy Assistance Program (LIHEAP), or health benefits coverage under the State Child Health Plan (CHIP) under Chapter 62, Health and Safety Code, National School Lunch Program -- Free Lunch Program, Temporary Assistance for Needy Families (TANF); or

(3) A customer is an eligible resident of Tribal lands as defined in subsection (c)(5) of this section. In addition to the programs listed in paragraph (2) of this subsection, residents of Tribal lands may qualify if they are in one of the programs listed in 47 C.F.R. §54.409 (b).

(e) **Lifeline Service Program.** Each Lifeline provider shall provide Lifeline Service as provided by this section. Lifeline Service is a non-transferable retail local exchange telephone service offering available to qualifying low-income customers. Lifeline Service shall be provided according to the following requirements:

(1) Designated Lifeline services. Lifeline providers shall offer the services or functionalities enumerated in 47 C.F.R. §54.101 (relating to Supported Services for Rural, Insular and High Cost Areas).

(2) Toll limitation. Lifeline providers shall offer toll limitation to all qualifying low-income customers at the time the customer subscribes to Lifeline Service. If the customer elects to receive toll limitation that service shall become part of the customer's Lifeline Service and the customer's monthly bill will not be increased by otherwise applicable toll limitation charges.

(3) Disconnection of service.

(A) Disconnection. A certificated provider of local exchange service shall be prohibited from disconnecting basic network services listed in PURA §58.051 to a customer who receives Lifeline Service because of nonpayment by the customer of charges for other services billed by the provider, including interexchange telecommunications service.

(B) A certificated provider of local exchange service may block a lifeline service customer's access to all interexchange telecommunications service except toll-free numbers when the customer owes an outstanding amount for that service. The provider shall remove the block without additional cost to the customer on payment of outstanding amount.

(C) Discontinuance of Lifeline Discounts for customers automatically enrolled. The eligibility period for automatically enrolled customers is the length of their enrollment in HHSC benefits plus a period of 60 days for renewal. Automatically enrolled customers will have an opportunity to renew their HHSC benefits or self-enroll with the LIDA upon the expiration of their automatic enrollment.

(D) Discontinuance of Lifeline discounts for customers who have self-enrolled. Individuals not receiving benefits through HHSC programs, but who have met Lifeline income qualifications in subsection (d) of this section, are eligible to receive the Lifeline discount for seven months, which includes a period of 60 days during which the customer may renew their eligibility with the LIDA for an additional seven months.

(4) Number Portability. Consistent with 47 C.F.R. §52.33, Lifeline providers may not charge Lifeline customers a monthly number-portability charge.

(5) Service deposit prohibition. If the qualifying low-income customer voluntarily elects toll limitation from the Lifeline provider, the Lifeline provider may not collect a service deposit pursuant to §26.24 of this title (relating to Credit Requirements and Deposits) in order to initiate Lifeline Service.

(6) Ancillary services. A Lifeline provider shall provide customers who apply for or receive Lifeline Service access to available vertical services or custom calling features, including caller ID, call waiting, and call blocking, at the same price as other consumers. Lifeline discounts shall only apply to that portion of the bill that is for basic network services.

(7) Bundled packages. A Lifeline provider shall provide customers who apply to receive Lifeline Service access to bundled packages at the same price as other consumers less the Lifeline discount that shall only apply to that portion of the bundled package bill that is for basic network service.

(f) **Lifeline support and recovery of support amounts.**

(1) **Lifeline discount amounts.** All Lifeline providers shall provide the following Lifeline discounts to all eligible Lifeline customers so long as the total of all the Lifeline discounts combined does not result in a rate of less than zero for a customer's basic local service. Should the total of all Lifeline discounts result in a rate of less than zero on a customer's bill, the Lifeline provider shall only provide a Lifeline discount amount up to the price a customer is charged for basic local service.

(A) Federally approved reduction - Up to the federal monthly basic Lifeline support amount outlined in 47 C.F.R. 54.403.

(B) Additional federal Lifeline reduction for an eligible customer who is a resident of Tribal lands, as defined in 47 C.F.R. §54.400, up to the federal monthly Lifeline amount outlined in 47 C.F.R. §54.403.

(C) State reduction - A state-approved reduction of up to a maximum of $3.50 in the monthly amount of intrastate charges.

(D) Texas High Cost Universal Service Plan (THCUSP) Incumbent Local Exchange Carrier (ILEC) Area Discount --

(i) All Lifeline providers operating in the service areas of Southwestern Bell Telephone Company d/b/a AT&T Texas, GTE Southwest Incorporated d/b/a Verizon Southwest, Central Telephone Company d/b/a CenturyLink, United Telephone Company d/b/a CenturyLink, and Windstream Communications Southwest, or their successors, (collectively, THCUSP ILECs) shall provide a reduction (THCUSP ILEC Area Discount) up to 25% of any actual increase by a THCUSP ILEC to its residential basic network service rate that occurs in a THCUSP ILEC's Public Utility Regulatory Act (PURA) Chapter 58 regulated exchanges.

(ii) A THCUSP ILEC Area Discount shall be calculated by a THCUSP ILEC on the basis of the weighted average of the Rate Increase(s). The calculation of the weighted average of the Rate Increase(s) shall use a denominator that is the sum of all PURA Chapter 58 regulated residential lines with Rate Increases, and shall use a numerator that is the sum of each product that results from multiplying the number of PURA Chapter 58 regulated residential lines affected by each discrete Rate Increase times the corresponding Rate Increase. The weighted average of the Rate Increase(s) calculation shall be included in the tariff filing made to implement the THCUSP ILEC Area Discount.

(iii) A THCUSP ILEC Area Discount shall be provided to all qualifying Lifeline customers who are located in the service area of the THCUSP ILEC that has implemented the corresponding Rate Increase.

(iv) A THCUSP ILEC shall file with the commission tariffs implementing a THCUSP ILEC Area Discount at the time it files for a rate increase. The effective date of a THCUSP ILEC Area Discount shall have the same effective date as the corresponding rate increase.

(v) A competitive local exchange carrier (CLEC) Lifeline provider operating in the service area of a THCUSP ILEC shall file with the commission tariffs or price lists implementing the appropriate THCUSP ILEC Area Discount.

(E) Small and Rural Incumbent Local Exchange Company Universal Service Plan (SRILEC USP) Area Discount -

(i) Beginning January 1, 2014, all Lifeline providers operating in the service areas of those incumbent local exchange carriers that participate in the SRILEC USP shall provide an increase in the Lifeline service discount up to 25% of any actual increase by a SRILEC USP ILEC to its residential basic network service rate that occurs in a SRILEC USP ILEC's regulated exchanges and is consistent with §26.404 of this title (relating to Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan).

(ii) A SRILEC shall file with the commission tariffs implementing a SRILEC USP Area Discount at the time it files for a rate increase. The effective date of a SRILEC USP Area Discount shall have the same effective date as the corresponding rate increase

(iii) A CLEC Lifeline provider operating in the service area of a SRILEC shall file with the commission tariffs or price lists implementing the appropriate SRILEC USP Area Discount.

(2) **Lifeline support amounts**. The following Lifeline providers shall receive support amounts for the Lifeline discounts outlined in paragraph (1) of this subsection. Note: A Lifeline provider shall not receive a support amount greater than the amount it provided to each qualifying Lifeline customer.

(A) ETC -- Pursuant to 47 C.F.R. §54.403, the federal Lifeline support an ETC shall receive is:

(i) Federally approved support amount pursuant to 47 C.F.R. §54.403.

(ii) Additional federal Lifeline reduction for an eligible resident of Tribal lands, as defined in 47 C.F.R. §54.400 -- up to the federal monthly Lifeline amount outlined in 47 C.F.R. §54.403.

(B) ETP --

(i) State support of up to a maximum of $3.50.

(ii) THCUSP ILEC Area support -- Amount calculated pursuant to paragraph (1)(D) of this subsection.

(iii) SRILEC USP support -- Amount calculated pursuant to paragraph (1)(E) of this subsection.

(iv) If an ETP has been designated as an ETC, then the certificated provider shall also receive support amounts prescribed by subparagraph (A) of this paragraph.

(C) Resale ETP -- A resale ETP shall receive Lifeline Service support up to or equal to the following state and federal amounts as long as the Lifeline Service was not purchased as a wholesale offering from the ILEC. Any Lifeline Service purchased as a wholesale offering from the ILEC includes the Lifeline Discount and is therefore not eligible to receive an additional discount. The TUSF, regardless of whether the Lifeline Service Discount is state or federally mandated, will provide the Lifeline Service support so long as the total of all the Lifeline discounts combined does not result in a rate of less than zero for a customer's basic local service. Should the total of all Lifeline discounts result in a rate of less than zero on a customer's bill, the Lifeline provider shall only provide a Lifeline discount amount up to the price a customer is charged for basic local service.

(i) Federally approved support amount pursuant to 47 C.F.R. §54.403.

(ii) Additional federal Lifeline reduction for an eligible resident of Tribal lands, as defined in 47 C.F.R. §54.400 -- up to the federal monthly Lifeline amount outlined in 47 C.F.R. §54.403;

(iii) State support of up to a maximum of $3.50.

(iv) THCUSP Area support -- Amount calculated pursuant to paragraph (1)(D) of this subsection.

(v) SRILEC USP support -- Amount calculated pursuant to paragraph (1)(E) of this subsection.

(D) Non-ETP/ETC -- A Non-ETP/ETC is not eligible to receive any state or federal Lifeline support.

(g) **Obligations of the customer and the Lifeline provider.**

(1) **Obligations of the customer.**

(A) Customers who meet the low-income requirement for qualification but do not receive benefits under the programs listed in subsection (d) of this section may provide the LIDA with self-enrollment for Lifeline benefits.

(B) Customers receiving benefits under the programs listed in subsection (d) of this section and who have telephone service will be subject to the Lifeline automatic enrollment procedures as provided by the LIDA unless they provide the LIDA with a request to be excluded from Lifeline Service.

(C) Customers receiving benefits under the programs listed in subsection (d) of this section and who do not have telephone service must initiate a request for service from a participating telecommunications carrier providing local service in their area.

(D) The LIDA shall provide a self-enrollment form by direct mail at the customer's request.

(E) Opportunity for contest.

(i) A customer who believes that their self-enrollment application has been erroneously denied may request in writing that LIDA review the application, and the customer may submit additional information as proof of eligibility.

(ii) A customer who is dissatisfied with LIDA's action following a request for review under clause (i) of this subparagraph may request in writing that an informal hearing be conducted by the commission staff.

(iii) A customer dissatisfied with the determination after an informal hearing under clause (ii) of this subparagraph may file a formal complaint pursuant to §22.242(e) of this title (relating to Complaints).

(2) **Obligations of Lifeline providers**.

(A) A Lifeline provider shall only provide Lifeline Service to all eligible customers identified by the LIDA within its service area in accordance with this section.

(i) A Lifeline provider shall identify, on the initial database provided by the LIDA, those customers to whom it is providing telephone service and shall begin reduced billing for those qualifying low-income customers.

(ii) The eligible customer shall not be charged for changes in telephone service arrangements that are made in order to qualify for Lifeline Service, or for service order charges associated with transferring the account into Lifeline Service. If the eligible customer changes the telephone service, the Lifeline provider shall begin reduced billing at the time the change of service becomes effective.

(iii) Monthly, all ETCs, ETPs, RETPs, and certificated providers providing telephone service in Texas must provide a file of its residential customers in a format and date determined by LIDA, for Lifeline processing.

(iv) Upon receipt of the monthly update provided by the LIDA, a Lifeline provider shall begin reduced billing for those qualifying low-income customers subscribing to services within 30 days.

(v) The LIDA shall maintain customers' self-enrollment forms and provide a file of self-enrolling customers to all Lifeline providers.

(B) **Tariff Requirement.** Each Lifeline provider shall file a tariff to implement Lifeline Service, or revise its existing tariff for compliance with this section and with applicable law, including subsection (f)(1)(C) of this section.

(C) **Reporting requirements.** Lifeline providers providing Lifeline Service pursuant to this section shall report information as required by the commission or the TUSF administrator, including but not limited to the following information:

(i) Initial reporting requirements. Lifeline providers shall provide the commission and the TUSF administrator with information demonstrating that it meets the requirements of this section.

(ii) Monthly reporting requirements. Lifeline providers shall report monthly to the TUSF administrator the total number of qualified low-income customers to whom Lifeline Service was provided for the month by the Lifeline providers. Resale ETPs shall not report any customers whose Lifeline Services were purchased from an ILEC as a wholesale Lifeline Service offering. The ILEC from whom these lines were purchased will include those customers in its total number of qualified low-income customers reported to the TUSF administrator. Non-ETP Lifeline providers are excluded from this reporting requirement since they have elected not to receive any type of Lifeline support.

(iii) Quarterly reporting requirements. Non-ETP certificated Lifeline providers shall report to the commission its Lifeline activity as required. Certificated non-ETPs shall use the *Report of Lifeline Service Provided by Non-ETP's* form located on the PUC website to provide this information.

(iv) Other reporting requirements. Lifeline providers shall report any other information required by the commission or the TUSF administrator, including any information necessary to assess contributions to and disbursements from the TUSF.

(v) ETPs shall file the following information with the administrator of the Federal Lifeline Program:

(I) information demonstrating that the ETP's Lifeline Service plan meets the criteria set forth in 47 C.F.R. Subpart E (relating to Universal Service Support for Low-Income Consumers);

(II) the number of qualifying low-income customers served by the ETP;

(III) the amount of state assistance; and

(IV) other information required by the administrator of the Federal Lifeline Program.

(D) **Notice Requirement.** A Lifeline provider shall provide the following notices of Lifeline Service:

(i) Notice of Lifeline Service in any directory it distributes to its customers advising customers of the availability of Lifeline Service. In any instance where the Lifeline provider provides bilingual (English and Spanish) information in its directory, the Lifeline provider must also provide its notice regarding Lifeline Service in a bilingual format;

(ii) An annual bill message-advising customers of the availability of Lifeline Service. In any instance where the Lifeline provider provides bilingual (English and Spanish) information in its annual bill messages, the Lifeline provider must also provide its notice regarding Lifeline Service in a bilingual format. All Lifeline providers are required to file a copy of the annual bill message in the designated project at the commission;

(iii) Inform all customers both orally and in writing of the existence of the Lifeline Service program when they request or initiate service or change service locations or providers. In any instance where the Lifeline provider provides bilingual (English and Spanish) information in its directory, the Lifeline provider must also provide its notice regarding Lifeline Service in a bilingual format; and

(iv) Shall publicize the availability of Lifeline Service in a manner reasonably designed to reach those likely to qualify for the service.

(E) **Confidentiality agreements.** Each Lifeline provider must execute a confidentiality agreement with the LIDA prior to receiving the LIDA's eligibility database. The agreement will specify that client information is released by the LIDA to the Lifeline provider for the sole purpose of providing Lifeline Service to eligible customers and that the information cannot be released by the Lifeline provider or be used by the Lifeline provider for any other purpose.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter P. TEXAS UNIVERSAL SERVICE FUND.

§26.413. Link Up for Tribal Lands.

(a) **Scope and purpose.** Through this section, the commission seeks to extend Link Up Service to all eligible residents of Tribal lands seeking telecommunications service from a telecommunications carrier that is receiving federal high-cost support on Tribal lands and define the responsibilities of participating telecommunications carriers and qualified customers.

(b) **Applicability.** This section applies to designated eligible telecommunications carriers (ETCs) as defined by §26.418 of this title (relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds) and designated eligible telecommunications providers (ETPs) as defined by §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)) that are receiving federal high-cost support on Tribal lands as defined in 47 C.F.R. §54.400, collectively referred to in this section as participating telecommunications carriers.

(c) **Definitions.**

(1) **Income** -- As defined in §26.412(c)(6) of this title (relating to Lifeline Service Program).

(2) **Eligible resident of Tribal lands** -- A "qualifying low-income customer," as defined by §26.412(c)(1) of this title, living on Tribal lands, as defined in 47 C.F.R. §54.400.

(d) **Link Up for Tribal Lands.** This is a program certified by the Federal Communications Commission (FCC), pursuant to 47 C.F.R. §54.413, that provides an eligible resident of Tribal lands with the following assistance:

(1) **Services.**

(A) An eligible resident of Tribal lands shall receive a reduction in the participating telecommunications carrier's customary charge for commencing telecommunications service for a primary single line connection at the customer's principal place of residence. The reduction shall be 100 percent of the customary charge or $100, whichever is less.

(B) An eligible resident of Tribal lands may receive a deferred schedule for payment of the charges assessed for commencing service, for which the eligible resident of Tribal lands does not pay interest. Interest shall be waived for connection charges of up to $200 that are deferred for a period not to exceed one year. Charges assessed for commencing service include any charges that the carrier customarily assesses to connect subscribers to the network. These charges do not include any permissible security deposit requirements. Deferred payment of these charges will not be subject to late fees or additional service fees.

(2) **Eligible resident of Tribal lands choice.** A qualifying eligible resident of Tribal lands is eligible for both of the services set forth in paragraph (1)(A) and (B) of this subsection.

(3) **Limitation on receipt.** A participating telecommunications carrier's Link Up for Tribal lands shall allow an eligible resident of Tribal lands to receive the benefit of Link Up for Tribal lands on subsequent occasions only for a principal place of residence with an address different from the residence address at which the Link Up for Tribal lands was provided previously.

(e) **Obligations of the customer.** Qualified eligible residents of Tribal lands who want Link Up for Tribal lands and do not have telephone service must initiate a request for service from a participating telecommunications carrier providing local service in their area.

(f) **Obligations of the participating telecommunications carrier.** Participating telecommunications carriers shall provide Link Up for Tribal lands to all eligible residents of Tribal lands in accordance with this section.

(1) Tariff requirement. Each participating telecommunications carrier shall file a tariff to implement Link Up for Tribal lands, or revise its existing tariff for compliance with this section and with applicable law.

(2) Notice of Link Up for Tribal Lands. A participating telecommunications carrier shall publicize the availability of Link Up for Tribal lands in a manner reasonably designed to reach those likely to qualify for the service.

(3) Confidentiality agreements. The confidentiality agreement executed by participating telecommunications carriers with HHSC for Lifeline Service also extends to Link Up Service.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter P. TEXAS UNIVERSAL SERVICE FUND.

§26.414. Telecommunications Relay Service (TRS).

(a) **Purpose.** The provisions of this section are intended to establish a statewide telecommunications relay service for individuals who are hearing-impaired or speech-impaired using specialized telecommunications devices and operator translations. Telecommunications relay service shall be provided on a statewide basis by one telecommunications carrier, except that the commission may contract with another vendor for a special feature in certain circumstances. Certain aspects of telecommunications relay service operations are applicable to local exchange companies and other telecommunications providers.

(b) **Provision of TRS.** TRS shall provide individuals who are hearing-impaired or speech-impaired with access to the telecommunications network in Texas equal to that provided to other customers.

(1) **Components of TRS.** TRS shall meet the mandatory minimum standards defined in §26.5 of this title (relating to Definitions) and further shall consist of the following:

(A) switching and transmission of the call;

(B) oral and print translations by either live or automated means between individuals who are hearing-impaired or speech-impaired who use specialized telecommunications devices and others who do not have such devices;

(C) sufficient operators and facilities to meet the grade and quality of service standards established by the commission for TRS, including the operator answering performance standards listed in §26.54(c)(2)(A) and (D) of this title (relating to Service Objectives and Performance Benchmarks).

(D) appropriate procedures for handling emergency calls;

(E) confidentiality regarding existence and content of conversations;

(F) capability of providing sufficient information to allow calls to be accurately billed;

(G) capability of providing for technologies such as hearing carryover or voice carryover;

(H) operator training to relay the contents of the call as accurately as possible without intervening in the communications;

(I) operator training in American Sign Language and familiarity with the special communications needs of individuals who are hearing-impaired or speech-impaired;

(J) capability for callers to place calls through TRS from locations other than their primary location and to utilize alternate billing arrangements;

(K) capability of providing both inbound and outbound intrastate and interstate service;

(L) capability for carrier of choice; and

(M) other service enhancements approved by the commission.

(2) **Conditions for interstate service.** The TRS carrier shall not be reimbursed from the Texas Universal Service Fund (TUSF) for the cost of providing interstate TRS. Interstate TRS shall be funded through the interstate jurisdiction as mandated by the Federal Communications Commission. Separate funds and records shall be maintained for intrastate TRS and interstate TRS.

(3) **Rates and charges.** The following rates and charges shall apply to TRS:

(A) Local calls. The calling and called parties shall bear no charges for calls originating and terminating within the same toll-free local calling scope.

(B) Intrastate long distance calls. The TRS carrier shall discount its tariffed intrastate rates by 50% for TRS users.

(C) Access charges. Telecommunications providers shall not impose access charges on calls that make use of this service and which originate and terminate within the same toll-free local calling scope.

(D) Billing and collection services. Upon request by the TRS carrier, telecommunications providers shall provide billing and collection services in support of this service at just and reasonable rates.

(c) **Contract for the TRS carrier.**

(1) **Selection.** On or before April 1, 2000, the commission shall issue a request for proposal and select a carrier to provide statewide TRS based on the following criteria: price, the interests of individuals who are hearing-impaired and speech-impaired in having access to a high quality and technologically-advanced telecommunications system, and all other factors listed in the commission's request for proposals. The commission shall consider each proposal in a manner that does not disclose the contents of the proposal to competing offerers. The commission's determination shall include evaluations of charges for the service, service enhancements proposed by the offerers, and technological sophistication of the network proposed by the offerers. The commission shall make a written award of the contract to the offerer whose proposal is the most advantageous to the state.

(2) **Location.** The operator centers used to provide statewide TRS shall be located in Texas.

(3) **Contract administration.**

(A) Contract amendments. All recommendations for amendments to the contract shall be filed with the executive director of the commission on June 1 of each year. The executive director is authorized to approve or deny all amendments to the contract between the TRS carrier and the commission, provided, however, that the commission specifically shall approve any amendment that will increase the cost of TRS.

(B) Reports. The TRS carrier(s) and telecommunications providers shall submit reports of their activities relating to the provision of TRS upon request of the commission or the Relay Texas administrator.

(C) Compensation. The TRS carrier(s) shall be compensated by the TUSF for providing TRS at the rates, terms, and conditions established in its contract with the commission, subject to the following conditions:

(i) Reimbursement shall include the TRS costs that are not paid by the calling or the called party, except the TRS carrier shall not be reimbursed for the 50% discount set forth in subsection (b)(3)(B) of this section.

(ii) Reimbursement may include a return on the investment required to provide the service and the cost of unbillable and uncollectible calls placed through the service, provided that the cost of unbillable and uncollectible calls shall be subject to a reasonable limitation as determined by the commission.

(iii) The TRS carrier shall submit a monthly report to the commission justifying its claims for reimbursement under the contract. Upon approval by the commission, the TUSF shall make a disbursement in the approved amount.

(d) **Special features for TRS.**

(1) The commission may contract for a special feature for the state's telecommunications relay access service if the commission determines:

(A) the feature will benefit the communication of persons with an impairment of hearing or speech;

(B) installation of the feature will be of benefit to the state; and

(C) the feature will make the relay access service available to a greater number of users.

(2) If the carrier selected to provide the telecommunications relay access service is unable to provide the special feature at the best value to the state, the commission may make a written award of a contract for a carrier to provide the special feature to the telecommunications carrier whose proposal is most advantageous to the state, considering;

(A) factors stated in subsection (c)(1) of this section;

(B) the past performance demonstrated capability and experience of the carrier.

(3) The commission shall consider each proposal in a manner that does not disclose the contents of the proposal to a telecommunications carrier making a competing proposal.

(4) The commission's evaluation of a telecommunications carrier's proposal shall include the considerations listed in subsection (c)(1) of this section.

(e) **Advisory Committee.** The commission shall appoint an Advisory Committee, to be known as the Relay Texas Advisory Committee (RTAC) to assist the commission in administering TRS and the specialized telecommunications assistance program, as specified by the Public Utility Regulatory Act (PURA) §56.111. The Relay Texas administrator shall serve as a liaison between the RTAC and the commission. The Relay Texas administrator shall ensure that the RTAC receives clerical and staff support, including a secretary or court reporter to document RTAC meetings.

(1) **Composition**. The commission shall appoint RTAC members based on recommended lists of candidates submitted by the organizations named as follows. The RTAC shall be composed of:

(A) two persons with disabilities other than disabilities of hearing and speech that impair the ability to effectively access the telephone network;

(B) one deaf person recommended by the Texas Deaf Caucus;

(C) one deaf person recommended by the Texas Association of the Deaf;

(D) one hearing-impaired person recommended by Self-Help for the Hard of Hearing;

(E) one hearing-impaired person recommended by the American Association of Retired Persons;

(F) one deaf and blind person recommended by the Texas Deaf/Blind Association;

(G) one speech-impaired person and one speech-impaired and hearing-impaired person recommended by the Coalition of Texans with Disabilities;

(H) two representatives of telecommunications utilities, one representing a local exchange company and one representing a telecommunications carrier other than a local exchange company, chosen from a list of candidates provided by the Texas Telephone Association;

(I) two persons, at least one of whom is deaf, with experience in providing relay services, recommended by the Texas Commission for the Deaf; and

(J) two public members recommended by organizations representing consumers of telecommunications services.

(2) **Conditions of membership.** The term of office of each RTAC member shall be two years. A member whose term has expired shall continue to serve until a qualified replacement is appointed. In the event a member cannot complete his or her term, the commission shall appoint a qualified replacement to serve the remainder of the term. RTAC members shall serve without compensation but shall be entitled to reimbursement at rates established for state employees for travel and per diem incurred in the performance of their official duties, provided such reimbursement is authorized by the Texas Legislature in the General Appropriations Act.

(3) **Responsibilities.** The RTAC shall undertake the following responsibilities:

(A) monitor the establishment, administration, and promotion of the statewide TRS;

(B) advise the commission regarding the pursuit of services that meet the needs of individuals who are hearing-impaired or speech-impaired in communicating with other users of telecommunications services;

(C) advise the commission regarding issues related to the contract between the TRS carrier and the commission, including any proposed amendments to such contract;

(D) advise the commission and the Texas Commission for the Deaf and Hard of Hearing, at the request of either commission, regarding issues related to the specialized telecommunications assistance program, including devices or services suitable to meet the needs of persons with disabilities in communicating with other users of telecommunications services.

(4) **Committee activities report.** After each RTAC meeting, the Relay Texas administrator shall prepare a report to the commission regarding the RTAC activities and recommendations.

(A) The Relay Texas administrator shall file in Central Records under Project Number 13928, and provide to each commissioner, a report containing:

(i) the minutes of the meeting;

(ii) a memo summarizing the meeting; and

(iii) a list of items, recommended by the RTAC, for the Relay Texas administrator to discuss with the TRS carrier, including issues related to the provisioning of the service that do not require amendments to the contract.

(B) Within 20 days after a report is filed, any commissioner may request that one or more items described in the report be placed on an agenda to be discussed during an open meeting of the commission. If no commissioner requests that the list be placed on an agenda for an open meeting, the report is deemed approved by the commission.

(5) **Evaluation of RTAC costs and effectiveness.** The commission shall evaluate the advisory committee annually. The evaluation shall be conducted by an evaluation team appointed by the executive director of the commission. The commission liaison, RTAC members, and other commission employees who work directly or indirectly with the RTAC, TRS, or the equipment distribution program shall not be eligible to serve on the evaluation team. The evaluation team will report to the commission in open meeting each August of its findings regarding:

(A) the committee's work;

(B) the committee's usefulness; and

(C) the costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter P. TEXAS UNIVERSAL SERVICE FUND.

§26.415. Specialized Telecommunications Assistance Program (STAP).

(a) **Purpose.** The provisions of this section are intended to establish procedures for a specialized telecommunications assistance program and for reimbursement to vendors and service providers who submit vouchers issued under the program.

(b) **Program responsibilities.**

(1) **Commission responsibilities.** The commission is responsible for:

(A) Adopting rules and procedures regarding the reimbursement to vendors for properly redeemed STAP vouchers;

(B) Administering the TUSF to ensure adequate funding of the specialized telecommunications assistance program;

(C) Appointing and providing administrative support for the Relay Texas Advisory Committee (RTAC), in accordance with the Public Utility Regulatory Act (PURA), §56.110 and §56.112 if funding is available; and

(D) Resolving disputes regarding the amount or propriety of the payment for a device or service or whether the device or service is appropriate or adequate to meet the need of the person to whom the voucher was issued.

(2) **Vendor and service provider responsibilities.** Vendors and service providers are responsible for adhering to the requirements set forth in this section and the commission's STAP procedures as posted on the commission's web site (www.puc.state.tx.us).

(c) **Program administration.**

(1) **Vendor and service provider registration.** A vendor or service provider who accepts STAP vouchers shall register with the commission and agree to comply with this section and the commission's STAP procedures as posted and periodically updated on the commission's web site. A vendor's or service provider's STAP registration shall include its name, contact person, address, telephone number, facsimile number (if available), and information sufficient to permit the commission's STAP administrator to reimburse the vendor or service provider by direct deposit rather than by check. If a vendor's or service provider's registration information is not complete or accurate, the STAP administrator shall notify the vendor or service provider, by certified mail, and the administrator of the Texas Universal Service Fund (TUSF) that the vendor or service provider is no longer eligible to receive voucher reimbursements under this program. The commission is not responsible if the vendor or service provider has not provided a correct mailing address for receipt of this notice. Reimbursements for vouchers that are otherwise eligible will be resumed after the vendor or service provider has completed and corrected its registration.

(2) **Vendor and service provider in good standing.** A vendor or service provider that is suspended or barred from doing business with the State of Texas or with the federal government is not eligible to participate in the this program. If a vendor or service provider is registered under the STAP and becomes barred from doing business with the State of Texas or the federal government, the STAP administrator shall notify the vendor or service provider, by certified mail, and the TUSF administrator that the vendor or service provider is no longer eligible to receive voucher reimbursements under the STAP. The commission is not responsible if the vendor or service provider has not provided a correct mailing address for receipt of this notice. Reimbursements for vouchers that are otherwise eligible will be resumed if the vendor or service provider is returned to good standing with the State of Texas and federal government.

(3) **Vendor or service provider adherence to commission STAP procedures.** Any vendor or service provider not in compliance with the commission's STAP procedures as posted on the commission's web site, within 30 days of the commission's posting of any new or amended procedures, is not eligible to receive voucher reimbursements under the STAP. The STAP

administrator may permanently bar, or suspend for a specified period of time, any vendor or service provider that the STAP administrator identifies as having billed the STAP for devices or services not provided to eligible customers.

(4) **Vendor or service provider reimbursement.** A vendor or service provider who exchanges a STAP voucher for the purchase of approved equipment or services in accordance with the requirements of the STAP may request reimbursement by the commission. If all reimbursement requirements are met, the STAP administrator shall approve reimburse to the vendor or service provider in an amount that is the lesser of: the face value of the STAP voucher, the actual retail price of the equipment or service as charged by the vendor or service provider to all STAP and non-STAP customers for the same equipment or service, or 125% of the manufacturer's suggested retail price for the device actually provided to the STAP customer as posted on the manufacturer's web site or provided by the manufacturer upon request.

(A) TUSF disbursements shall be made only upon receipt from the vendor or service provider of:

(i) The vendor's copy of the voucher signed by the vendor, or an authorized representative, in the space provided thereon. By signing the voucher, the vendor is certifying that the device or service has been delivered to the voucher recipient, and that the device was new when delivered and was not used or re-conditioned.

(ii) The vendor's proof of delivery of the device or service to the voucher recipient. For proof of delivery, the vendor should seek the voucher recipient's signature on the voucher in the space provided thereon. If the vendor is unable to obtain the recipient's signature on the voucher, other evidence of delivery, such as a postal or private delivery service receipt, may be used for proof of delivery to the recipient. However, evidence of delivery to the voucher recipient must include the signature of the voucher recipient, the signature of the recipient's parent, guardian, spouse, or the signature of a person receiving the delivery at the delivery address who is at least 18 years of age.

(iii) A receipt that contains a description of the device or service exchanged for the STAP voucher and the price charged to the customer for the device or service exchanged. The price charged to the customer for the device or service exchanged for the voucher cannot exceed the standard retail price charged by that vendor to all of its customers who purchase the same equipment or service.

(B) TUSF disbursements may also be subject to such other limitations or conditions as determined by the commission to be just and reasonable, including investigation of whether the presentation of a STAP voucher represents a valid transaction for equipment or service under the STAP.

(C) If a dispute arises as to whether the submitted documentation is sufficient to create a presumption of a valid STAP sales transaction, the commission will be the sole judge of the sufficiency of the documentation.

(D) The TUSF administrator shall ensure that reimbursement to vendors for STAP vouchers shall be issued within 45 days after the STAP voucher and other documentation required under subparagraph (A) of this paragraph is received by the TUSF administrator.

(E) The commission may delay payment of a voucher to a vendor or service provider if there is a dispute regarding the amount or propriety of the payment or whether the device or service is appropriate or adequate to meet the needs of the person to whom the DHHS issued the voucher until the dispute is resolved.

(F) The commission shall process a voucher for payment no sooner than ten working days from the date the STAP customer received the device or service.

(G) The vendor or service provider shall refund a reimbursement if the device is returned to the vendor within 30 days of receipt or if the service is not used by the STAP customer within 30 days of its availability.

(H) A STAP vendor or service provider must submit voucher reimbursement requests, along with sufficient and accurate supporting documentation, by the deadline specified in the commission's STAP procedures. The deadline specified in the commission's STAP procedures shall be no later than 120 days after the exchange date on the voucher or on the proof of delivery. The STAP administrator shall not authorize reimbursement of any voucher if the voucher or its sufficient and accurate supporting documentation is submitted after the deadline specified in the commission's STAP procedures.

(I) The commission may provide an alternative dispute resolution process for resolving a dispute regarding the equipment or service provided.

(J) Any request for reimbursement pending on the effective date of this subparagraph shall be denied by the STAP administrator if the vendor fails to submit the requisite voucher or sufficient and accurate supporting documentation that is sufficient and accurate within 120 days after the effective date of this subparagraph.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter P. TEXAS UNIVERSAL SERVICE FUND.

§26.417. Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF).

(a) **Purpose.** This section provides the requirements for the commission to designate telecommunications providers as eligible telecommunications providers (ETPs) to receive funds from the Texas Universal Service Fund (TUSF) under §26.403 of this title (relating to the Texas High Cost Universal Service Plan (THCUSP)) and §26.404 of this title (relating to the Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan). Only telecommunications providers designated by the commission as ETPs shall qualify to receive universal service support under these programs.

(b) **Requirements for establishing ETP service areas.**

(1) THCUSP service area. THCUSP service area shall be based upon wire centers (WCs) or other geographic area as determined appropriate by the commission. A telecommunications provider may be designated an ETP for any or all WCs that are wholly or partially contained within its certificated service area. An ETP must serve an entire WC, or other geographic area as determined appropriate by the commission, unless its certificated service area does not encompass the entire WC, or other geographic area as determined appropriate by the commission.

(2) Small and Rural ILEC Universal Service Plan service area. A Small and Rural ILEC Universal Service Plan service area for an ETP serving in a small or rural ILEC's territory shall include the entire study area of such small or rural ILEC.

(c) **Criteria for designation of ETPs.**

(1) **Telecommunications providers.** A telecommunications provider, as defined in the Public Utility Regulatory Act (PURA) §51.002(10), shall be eligible to receive TUSF support pursuant to §26.403 or §26.404 of this title in each service area for which it seeks ETP designation if it meets the following requirements:

(A) the telecommunications provider has been designated an eligible telecommunications carrier, pursuant to §26.418 of this title (relating to the Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds), and provides the federally designated services to customers in order to receive federal universal service support;

(B) the telecommunications provider defines its ETP service area pursuant to subsection (b) of this section and assumes the obligation to offer any customer within an exchange in its ETP service area, for which the provider receives support under this section, basic local telecommunications services, as defined in §26.403 of this title, at a rate not to exceed 150% of the ILEC's tariffed rate;

(C) the telecommunications provider offers basic local telecommunications services using either its own facilities, purchased unbundled network elements (UNEs), or a combination of its own facilities, purchased UNEs, and resale of another carrier's services;

(D) the telecommunications provider renders continuous and adequate service within an exchange in its ETP service area for which the provider receives support under this section, in compliance with the quality of service standards defined in §26.52 of this title (relating to Emergency Operations), §26.53 of this title (relating to Inspections and Tests), and §26.54 of this title (relating to Service Objectives and Performance Benchmarks);

(E) the telecommunications provider offers services in compliance with §26.412 of this title (relating to Lifeline Service Programs); and

(F) the telecommunications provider advertises the availability of, and charges for, supported services using media of general distribution.

(2) **ILECs**. If the telecommunications provider is an ILEC, as defined in PURA §51.002(10), it shall be eligible to receive TUSF support pursuant to §26.403 of this title in each service area for which it seeks ETP designation if it meets the requirements of paragraph (1) of this subsection and the following requirements:

(A) If the ILEC is regulated pursuant to the Public Utility Regulatory Act (PURA) Chapter 58 or 59 it shall either:

(i) reduce rates for services determined appropriate by the commission to an amount equal to its THCUSP support amount; or

(ii) provide a statement that it agrees to a reduction of its THCUSP support amount equal to its CCL, RIC and intraLATA toll revenues.

(B) If the ILEC is not regulated pursuant to PURA Chapter 58 or 59 it shall reduce its rates for services determined appropriate by the commission by an amount equal to its THCUSP support amount.

(C) Any reductions in switched access service rates for ILECs with more than 125,000 access lines in service in this state on December 31, 1998, that are made in accordance with this section shall be proportional, based on equivalent minutes of use, to reductions in intraLATA toll rates, and those reductions shall be offset by equal disbursements from the universal service fund under PURA §56.021(1). This subparagraph expires August 31, 2007.

(d) **Designation of more than one ETP.**

(1) In areas not served by small or rural ILECs, as defined in §26.404(b) of this title, the commission may designate, upon application, more than one ETP in an ETP service area so long as each additional provider meets the requirements of subsection (c) of this section.

(2) In areas served by small or rural ILECs as defined in §26.404(b) of this title, the commission may designate additional ETPs if the commission finds that the designation is in the public interest.

(e) **Proceedings to designate telecommunications providers as ETPs.**

(1) At any time, a telecommunications provider may seek commission approval to be designated an ETP for a requested service area.

(2) In order to receive support under §26.403 or §26.404 of this title for exchanges purchased from an unaffiliated provider, the acquiring ETP shall file an application, within 30 days after the date of the purchase, to amend its ETP service area to include those geographic areas in the purchased exchanges that are eligible for support.

(3) If an ETP receiving support under §26.403 or §26.404 of this title sells an exchange to an unaffiliated provider, it shall file an application, within 30 days after the date of the sale, to amend its ETP designation to exclude, from its designated service area, those exchanges for which it was receiving support.

(f) **Requirements for application for ETP designation and commission processing of application.**

(1) **Requirements for notice and contents of application for ETP designation.**

(A) Notice of application. Notice shall be published in the *Texas Register*. The presiding officer may require additional notice. Unless otherwise required by the presiding officer or by law, the notice shall include at a minimum a description of the service area for which the applicant seeks designation, the proposed effective date of the designation, and the following language: "Persons who wish to comment on this application should notify the Public Utility Commission by (specified date, ten days before the proposed effective date). Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or (888)

782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136, or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477."

(B) Contents of application. A telecommunications provider seeking to be designated as an ETP for a high cost service area in this state shall file with the commission an application complying with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission staff and one copy shall be delivered to the Office of Public Utility Counsel.

(i) Telecommunications providers. The application shall:

(I) show that the applicant is a telecommunications provider as defined in PURA §51.002(10);

(II) show that the applicant has been designated by the commission as a telecommunications provider eligible for federal universal service support and show that the applicant offers federally supported services to customers pursuant to the terms of 47 United States Code §214(e) (relating to Provision of Universal Service) in order to receive federal universal service support;

(III) specify the THCUSP or small and rural ILEC service area in which the applicant proposes to be an ETP, show that the applicant offers each of the designated services, as defined in §26.403 of this title, throughout the THCUSP or small and rural ILEC service area for which it seeks an ETP designation, and show that the applicant assumes the obligation to offer the services, as defined in §26.403 of this title, to any customer in the THCUSP or small and rural ILEC service area for which it seeks ETP designation;

(IV) show that the applicant does not offer the designated services, as defined in §26.403 of this title, solely through total service resale;

(V) show that the applicant renders continuous and adequate service within the area or areas, for which it seeks designation as an ETP, in compliance with the quality of service standards defined in §§26.52, 26.53, and 26.54 of this title;

(VI) show that the applicant offers Lifeline and Link Up services in compliance with §26.412 of this title;

(VII) show that the applicant advertises the availability of and charges for designated services, as defined in §26.403 of this title, using media of general distribution;

(VIII) a statement detailing the method and content of the notice the applicant has provided or intends to provide to the public regarding the application and a brief statement explaining why the notice proposal is reasonable and that the notice proposal complies with applicable law;

(IX) provide a copy of the text of the notice;

(X) state the proposed effective date of the designation; and

(XI) provide any other information which the applicant wants considered in connection with the commission's review of its application.

(ii) ILECs. If the applicant is an ILEC, in addition to the requirements of clause (i) of this subparagraph, the application shall show compliance with the requirements of subsection (c)(2) of this section.

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

(A) Administrative review. An application considered under this section may be reviewed administratively unless the telecommunications provider requests the application be

docketed or the presiding officer, for good cause, determines at any point during the review that the application should be docketed.

(i) The effective date of the ETP designation shall be no earlier than 30 days after the filing date of the application or 30 days after notice is completed, whichever is later.

(ii) The application shall be examined for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant shall be notified within ten working days of the filing date of the specific deficiency in its application. The earliest possible effective date of the application shall be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any deadlines shall be determined from the 30th day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date.

(iii) While the application is being administratively reviewed, the commission staff and the staff of the Office of Public Utility Counsel may submit requests for information to the applicant. Three copies of all answers to such requests for information shall be provided to the commission staff and the Office of Public Utility Counsel within ten days after receipt of the request by the applicant.

(iv) No later than 20 days after the filing date of the application or the completion of notice, whichever is later, interested persons may provide written comments or recommendations concerning the application to the commission staff. The commission staff shall and the Office of Public Utility Counsel may file with the presiding officer written comments or recommendations regarding the application.

(v) No later than 35 days after the proposed effective date of the application, the presiding officer shall issue an order approving, denying, or docketing the application.

(B) Approval or denial of application. The application shall be approved by the presiding officer if it meets the following requirements.

(i) The provision of service constitutes basic local telecommunications service as defined in §26.403 of this title.

(ii) Notice was provided as required by this section.

(iii) The applicant has met the requirements contained in subsection (c) of this section.

(iv) The ETP designation is consistent with the public interest in a technologically advanced telecommunications system and consistent with the preservation of universal service.

(C) Docketing. If, based on the administrative review, the presiding officer determines that one or more of the requirements have not been met, the presiding officer shall docket the application. The requirements of subsection (c) of this section may not be waived.

(D) Review of the application after docketing. If the application is docketed, the effective date of the application shall be automatically suspended to a date 120 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after the proposed effective date, whichever is later. Three copies of all answers to requests for information shall be filed with the commission within ten days after receipt of the request. Affected persons may move to intervene in the docket, and a hearing on the merits shall be scheduled. A hearing on the merits shall be limited to issues of eligibility. The application shall be processed in accordance with the commission's rules applicable to docketed cases.

(g) **Relinquishment of ETP designation.** A telecommunications provider may seek to relinquish its ETP designation.

(1) **Area served by more than one ETP.** The commission shall permit a telecommunications provider to relinquish its ETP designation in any area served by more than one ETP upon:

(A) written notification not less than 90 days prior to the proposed effective date of the relinquishment;

(B) determination by the commission that the remaining ETP or ETPs can provide basic local service to the relinquishing telecommunications provider's customers; and

(C) determination by the commission that sufficient notice of relinquishment has been provided to permit the purchase or construction of adequate facilities by any remaining ETP or ETPs.

(2) **Area where the relinquishing telecommunications provider is the sole ETP.** In areas where the relinquishing telecommunications provider is the only ETP, the commission may permit it to relinquish its ETP designation upon:

(A) written notification that the telecommunications provider seeks to relinquish its ETP designation; and

(B) commission designation of a new ETP for the service area or areas through the auction procedure provided in subsection (h) of this section.

(3) **Relinquishment for non-compliance.** The TUSF administrator shall notify the commission when the TUSF administrator is aware that an ETP is not in compliance with the requirements of subsection (c) of this section.

(A) The commission shall revoke the ETP designation of any telecommunications provider determined not to be in compliance with subsection (c) of this section.

(B) The commission may revoke a portion of the ETP designation of any telecommunications provider determined not to be in compliance with the quality of service standards defined in §§26.52, 26.53, and 26.54 of this title, in that portion of its ETP service area.

(h) **Auction procedure for replacing the sole ETP in an area.** In areas where a telecommunications provider is the sole ETP and seeks to relinquish its ETP designation, the commission shall initiate an auction procedure to designate another ETP. The auction procedure will use a competitive, sealed bid, single-round process to select a telecommunications provider meeting the requirements of subsection (f)(1) of this section that will provide basic local telecommunications service at the lowest cost.

(1) **Announcement of auction.** Within 30 days of receiving a request from the last ETP in a service area to relinquish its designation, the commission shall provide notice in the *Texas Register* of the auction. The announcement shall at minimum detail the geographic location of the service area, the total number of access lines served, the forward-looking economic cost computed pursuant to §26.403 of this title, of providing basic local telecommunications service and the other services included in the benchmark calculation, existing tariffed rates, bidding deadlines, and bidding procedure.

(2) **Bidding procedure.** Bids must be received by the TUSF administrator not later than 60 days from the date of publication in the *Texas Register*.

(A) Every bid must contain:

(i) the level of assistance per line that the bidder would need to provide all services supported by universal service mechanisms;

(ii) information to substantiate that the bidder meets the eligibility requirements in subsection (c)(1) of this section; and

(iii) information to substantiate that the bidder has the ability to serve the relinquishing ETP's customers.

(B) The TUSF administrator shall collect all bids and within 30 days of the close of the bidding period request that the commission approve the TUSF administrator's selection of the successful bidder.

(C) The commission may designate the lowest qualified bidder as the ETP for the affected service area or areas.

(i) **Requirements for annual affidavit of compliance to receive TUSF support.** An ETP serving a rural or non-rural study area shall comply with the following requirements for annual compliance for the receipt of TUSF support.

(1) **Annual Affidavit of Compliance**. On or before September 1 of each year, an ETP that receives disbursements from the TUSF shall file with the commission an affidavit certifying that the ETP is in compliance with the requirements for receiving money from the universal service fund and requirements regarding the use of money from each TUSF program from which the telecommunications provider receives disbursements.

(2) **Filing Affidavit**. The affidavit used shall be the annual compliance affidavit approved by the commission.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter P. TEXAS UNIVERSAL SERVICE FUND.

§26.418. Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds.

(a) **Purpose.** This section provides the requirements for the commission to designate common carriers as eligible telecommunications carriers (ETCs) to receive support from the federal universal service fund (FUSF) pursuant to 47 United States Code (U.S.C.) §214(e) (relating to Provision of Universal Service). In addition, this section provides guidelines for rural and non-rural carriers to meet the federal requirements of annual certification for FUSF support criteria and, if requested or ordered, for the disaggregation of rural carriers' FUSF support.

(b) **Application.** This section applies to a common carrier seeking designation as an ETC, except for commercial mobile radio service (CMRS) resellers. A CMRS reseller may not seek designation from the commission, but instead may seek designation as an ETC by the Federal Communications Commission (FCC). This section also applies to a common carrier that has been designated by the commission as an ETC, including a CMRS reseller. Subsection (i) of this section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Act (PURA) §52.154.

(c) **Service areas.** The commission may designate ETC service areas according to the following criteria.

(1) **Non-rural service area.** To be eligible to receive federal universal service support in non-rural areas, a carrier must provide federally supported services pursuant to 47 Code of Federal Regulations (C.F.R.) §54.101 (relating to Supported Services for Rural, Insular, and High Cost Areas) throughout the area for which the carrier seeks to be designated an ETC.

(2) **Rural service area.** In the case of areas served by a rural telephone company, as defined in §26.404 of this title (relating to Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan), a carrier must provide federally supported services pursuant to 47 C.F.R. §54.101 throughout the study area of the rural telephone company in order to be eligible to receive federal universal service support.

(d) **Criteria for determination of ETCs.** A common carrier shall be designated as eligible to receive federal universal service support if it:

(1) offers the services that are supported by the federal universal service support mechanisms under 47 C.F.R. §54.101 either using its own facilities or a combination of its own facilities and resale of another carrier's services; and

(2) advertises the availability of and charges for such services using media of general distribution.

(e) **Criteria for determination of receipt of federal universal service support.** In order to receive federal universal service support, a common carrier must:

(1) meet the requirements of subsection (d) of this section;

(2) offer Lifeline Service to qualifying low-income consumers in compliance with 47 C.F.R. Part 54, Subpart E (relating to Universal Service Support for Low-Income Consumers); and

(3) offer toll limitation services in accordance with 47 C.F.R. §54.400 (relating to Terms and Definitions) and §54.401 (relating to Lifeline Defined).

(f) **Designation of more than one ETC.**

(1) Non-rural service areas. In areas not served by rural telephone companies, as defined in §26.404 of this title, the commission shall designate, upon application, more than one ETC in a service area so long as each additional carrier meets the requirements of subsections (c)(1) and (d) of this section.

(2) Rural service areas. In areas served by rural telephone companies, as defined in §26.404 of this title, the commission may designate as an ETC a carrier that meets the requirements of subsections (c)(2) and (d) of this section if the commission finds that the designation is in the public interest.

(g) **Proceedings to designate ETCs.**

(1) At any time, a common carrier may seek commission approval to be designated an ETC for a requested service area.

(2) In order to receive support under this section for exchanges purchased from an unaffiliated carrier, the acquiring ETC shall file an application, within 30 days after the date of the purchase, to amend its ETC service area to include those geographic areas that are eligible for support.

(3) If an ETC receiving support under this section sells an exchange to an unaffiliated carrier, it shall file an application, within 30 days after the date of the sale, to amend its ETC designation to exclude from its designated service area those exchanges for which it was receiving support.

(h) **Application requirements and commission processing of applications.**

(1) **Requirements for notice and contents of application.**

(A) Notice of application. Notice shall be published in the *Texas Register*. The presiding officer may require additional notice. Unless otherwise required by the presiding officer or by law, the notice shall include at a minimum a description of the service area for which the applicant seeks eligibility, the proposed effective date of the designation, and the following statement: "Persons who wish to comment on this application should notify the Public Utility Commission of Texas by (specified date, ten days before the proposed effective date). Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136, or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477."

(B) Contents of application for each common carrier seeking ETC designation. A common carrier that seeks to be designated as an ETC shall file with the commission an application complying with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission's Regulatory Division and one copy shall be delivered to the Office of Public Utility Counsel. The application shall:

(i) show that the applicant offers each of the services that are supported by the FUSF support mechanisms under 47 U.S.C. §254(c) (relating to Universal Service) either using its own facilities or a combination of its own facilities and resale of another carrier's services throughout the service area for which it seeks designation as an ETC;

(ii) show that the applicant assumes the obligation to offer each of the services that are supported by the FUSF support mechanisms under 47 U.S.C. §254(c) to any consumer in the service area for which it seeks designation as an ETC;

(iii) show that the applicant advertises the availability of, and charges for, such services using media of general distribution;

(iv) show the service area in which the applicant seeks designation as an ETC;

(v) contain a statement detailing the method and content of the notice the applicant has provided or intends to provide to the public regarding the application and a brief statement explaining why the proposed notice is reasonable and in compliance with applicable law;

(vi) contain a copy of the text of the notice;

(vii) contain the proposed effective date of the designation; and

(viii) contain any other information which the applicant wants considered in connection with the commission's review of its application.

(C) Contents of application for each common carrier seeking ETC designation and receipt of federal universal service support. A common carrier that seeks to be designated as an ETC and receive federal universal service support shall file with the commission an application complying with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission staff and one copy shall be delivered to the Office of Public Utility Counsel. The application shall:

(i) comply with the requirements of subparagraph (B) of this paragraph;

(ii) show that the applicant offers Lifeline Service to qualifying low-income consumers in compliance with 47 C.F.R. Part 54, Subpart E; and

(iii) show that the applicant offers toll limitation services in accordance with 47 C.F.R. §54.400 and §54.401.

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

(A) **Administrative review**. An application considered under this section may be reviewed administratively unless the presiding officer, for good cause, determines at any point during the review that the application should be docketed.

(i) The effective date shall be no earlier than 30 days after the filing date of the application or 30 days after notice is completed, whichever is later.

(ii) The application shall be examined for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant shall be notified within ten working days of the filing date of the specific deficiency in its application. The earliest possible effective date of the application shall be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any deadlines shall be determined from the 30th day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date.

(iii) While the application is being administratively reviewed, the commission staff and the staff of the Office of Public Utility Counsel may submit requests for information to the telecommunications carrier. Three copies of all answers to such requests for information shall be provided to the commission staff and the Office of Public Utility Counsel within ten days after receipt of the request by the telecommunications carrier.

(iv) No later than 20 days after the filing date of the application or the completion of notice, whichever is later, interested persons may provide the commission staff with written comments or recommendations concerning the application. The commission staff shall and the Office of Public Utility Counsel may file with the presiding officer written comments or recommendations regarding the application.

(v) No later than 35 days after the proposed effective date of the application, the presiding officer shall issue an order approving, denying, or docketing the application.

(B) **Approval or denial of application.**

(i) An application filed pursuant to paragraph (1)(B) of this subsection shall be approved by the presiding officer if the application meets the following requirements:

(I) the provision of service constitutes the services that are supported by the FUSF support mechanisms under 47 U.S.C. §254(c);

(II) the applicant will provide service using either its own facilities or a combination of its own facilities and resale of another carrier's services;

(III) the applicant advertises the availability of, and charges for, such services using media of general distribution;

(IV) notice was provided as required by this section;

(V) the applicant satisfies the requirements contained in subsection (c) of this section; and

(VI) if, in areas served by a rural telephone company, the ETC designation is consistent with the public interest.

(ii) An application filed pursuant to paragraph (1)(C) of this subsection shall be approved by the presiding officer if the application meets the following requirements:

(I) the applicant has satisfied the requirements set forth in clause (i) of this subparagraph;

(II) the applicant offers Lifeline Service to qualifying low-income consumers in compliance with 47 C.F.R. Part 54, Subpart E; and

(III) the applicant offers toll limitation services in accordance with 47 C.F.R. §54.400 and §54.401.

(C) **Docketing.** If, based on the administrative review, the presiding officer determines that one or more of the requirements have not been met, the presiding officer shall docket the application.

(D) **Review of the application after docketing**. If the application is docketed, the effective date of the application shall be automatically suspended to a date 120 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after the proposed effective date, whichever is later. Three copies of all answers to requests for information shall be filed with the commission within ten days after receipt of the request. Affected persons may move to intervene in the docket, and a hearing on the merits shall be scheduled. A hearing on the merits shall be limited to issues of eligibility. The application shall be processed in accordance with the commission's rules applicable to docketed cases.

(E) **Waiver**. In the event that an otherwise ETC requests additional time to complete the network upgrades needed to provide single-party service, access to enhanced 911 service, or toll limitation, the commission may grant a waiver of these service requirements upon a finding that exceptional circumstances prevent the carrier from providing single-party service, access to enhanced 911 service, or toll limitation. The period for the waiver shall not extend beyond the time that the commission deems necessary for that carrier to complete network upgrades to provide single-party service, access to enhanced 911 service, or toll limitation services.

(i) **Designation of ETC for unserved areas.** If no common carrier will provide the services that are supported by federal universal service support mechanisms under 47 U.S.C. §254(c) to an unserved community or any portion thereof that requests such service, the commission, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof and shall order such carrier or carriers to provide such service for that unserved community or portion thereof.

(j) **Relinquishment of ETC designation.** A common carrier may seek to relinquish its ETC designation.

(1) **Area served by more than one ETC.** The commission shall permit a common carrier to relinquish its designation as an ETC in any area served by more than one ETC upon:

(A) written notification not less than 90 days prior to the proposed effective date that the common carrier seeks to relinquish its designation as an ETC;

(B) determination by the commission that the remaining eligible telecommunications carrier or carriers can offer federally supported services to the relinquishing carrier's customers; and

(C) determination by the commission that sufficient notice of relinquishment has been provided to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier or carriers.

(2) **Area where the common carrier is the sole ETC.** In areas where the common carrier is the only ETC, the commission may permit it to relinquish its ETC designation upon:

(A) written notification not less than 90 days prior to the proposed effective date that the common carrier seeks to relinquish its designation as an ETC; and

(B) commission designation of a new ETC for the service area or areas.

(k) **Rural and non-rural carriers' requirements for annual certification to receive FUSF support.** A common carrier serving a rural or non-rural study area shall comply with the following requirements for annual certification for the receipt of FUSF support.

(1) **Annual certification.** Common carriers must provide the commission with an affidavit annually, on or before September 1st of each year, which certifies that the carrier is complying with the federal requirements for the receipt of FUSF support. Upon receipt and acceptance of the affidavits filed on or before September 1st each year, the commission will certify these carriers' eligibility for FUSF to the FCC and the Federal Universal Service Fund Administrator by October 1st each year.

(2) **Failure to file.** Common carriers failing to file an affidavit by September 1st may still be certified by the commission for annual FUSF. However, the carrier is ineligible for support until the quarter following the federal universal service administrator's receipt of the commission's supplemental submission of the carrier's compliance with the federal requirements.

(3) **Supplemental certification.** For carriers not subject to the annual certification process, the schedule set forth in 47 C.F.R. §54.313 and 47 C.F.R. §54.314(d) for the filing of supplemental certifications shall apply.

(4) **Recommendation for Revocation of FUSF support certification.** The commission may recommend the revocation of the FUSF support certification of any carrier that it determines has not complied with the federal requirements pursuant to 47 U.S.C. §254(e) and will review any challenge to a carrier's FUSF support certification and make an appropriate recommendation as a result of any such review.

(l) **Disaggregation of rural carriers' FUSF support.** Common carriers serving rural study areas must comply with the following requirements regarding disaggregation of FUSF support.

(1) **Election by May 15, 2002.** On or before May 15, 2002, all rural incumbent local exchange carriers (ILECs) may notify the commission of one of the following elections regarding FUSF support. This election will remain in place for four years from the effective date of certification, pursuant to 47 C.F.R. §54.315, unless the commission, on its own motion, or upon the motion of the rural ILEC or an interested party, requires a change to the elected disaggregation plan:

(A) a rural ILEC may choose to certify to the commission that it will not disaggregate at this time;

(B) a rural ILEC may seek disaggregation of its FUSF support by filing a targeted plan with the commission that meets the criteria in paragraph (3) of this subsection, subject to the commission's approval of the plan;

(C) a rural ILEC may self-certify a disaggregation targeted plan that meets the criteria in paragraphs (3) and (4) of this subsection, disaggregate support to the wire center level or up to no more than two cost zones, or mirror a plan for disaggregation that has received prior commission approval; or

(D) if the rural ILEC serves a study area that is served by another carrier designated as an ETC prior to the effective date of 47 C.F.R. §54.315, (June 19, 2001), the ILEC may only self-certify the disaggregation of its FUSF support by adopting a plan for disaggregation that has received prior commission approval.

(2) **Abstain from filing.** If a rural ILEC abstains from filing an election on or before May 15, 2002, the carrier will not be permitted to disaggregate its FUSF support unless it is ordered to do so by the commission pursuant to the terms of paragraph (5) of this subsection.

(3) **Requirements for rural ILECs' disaggregation plans.** Pursuant to the federal requirements in 47 C.F.R. §54.315(e) a rural ILEC's disaggregation plan, whether submitted pursuant to paragraph (1)(B), (C) or (D) of this subsection, must meet the following requirements:

(A) the sum of the disaggregated annual support must be equal to the study area's total annual FUSF support amount without disaggregation;

(B) the ratio of the per line FUSF support between disaggregation zones for each disaggregated category of FUSF support shall remain fixed over time, except as changes are required pursuant to paragraph (5) of this subsection;

(C) the ratio of per line FUSF support shall be publicly available;

(D) the per line FUSF support amount for each disaggregated zone or wire center shall be recalculated whenever the rural ILEC's total annual FUSF support amount changes and revised total per line FUSF support and updated access line counts shall then be applied using the changed FUSF support amount and updated access line counts applicable at that point;

(E) each support category complies with subparagraphs (A) and (B) of this paragraph;

(F) monthly payments of FUSF support shall be based upon the annual amount of FUSF support divided by 12 months if the rural ILEC's study area does not contain a competitive carrier designated as an ETC; and

(G) a rural ILEC's disaggregation plan methodology and the underlying access line count upon which it is based will apply to any competitive carrier designated as an ETC in the study area.

(4) **Additional requirements for self-certification of a disaggregation plan.** Pursuant to 47 C.F.R. §54.315(d)(2), a rural ILEC's self-certified disaggregation plan must also include the following items in addition to those items required by paragraph (3) of this subsection:

(A) support for, and a description of, the rationale used, including methods and data relied upon, as well as a discussion of how the plan meets the requirements in paragraph (3) of this subsection and this paragraph;

(B) a reasonable relationship between the cost of providing service for each disaggregation zone within each disaggregation category of support proposed;

(C) a clearly specified per-line level of FUSF support for each category pursuant to 47 C.F.R. §54.315(d)(2)(iii);

(D) if the plan uses a benchmark, a detailed explanation of the benchmark and how it was determined that is generally consistent with how the level of support for each category of costs was derived so that competitive ETCs may compare the disaggregated costs for each cost zone proposed; and

(E) maps identifying the boundaries of the disaggregated zones within the study area.

(5) **Disaggregation upon commission order.** The commission on its own motion or upon the motion of an interested party may order a rural ILEC to disaggregate FUSF support under the following criteria:

(A) the commission determines that the public interest of the rural study area is best served by disaggregation of the rural ILEC's FUSF support;

(B) the commission establishes the appropriate disaggregated level of FUSF support for the rural ILEC; or

(C) changes in ownership or changes in state or federal regulation warrant the commission's action.

(6) **Effective dates of disaggregation plans.** The effective date of a rural ILEC's disaggregation plan shall be as specified in 47 C.F.R. §54.315.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter P. TEXAS UNIVERSAL SERVICE FUND.

§26.419. Telecommunication Resale Providers Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF) for Lifeline Service.

(a) **Scope and Purpose.** This section provides the requirements for the commission to designate certificated providers of local exchange telephone service that provide this service solely through the resale of an incumbent local exchange carrier's (ILEC) services as an eligible telecommunications provider (ETP) for the specific purpose of receiving funds for Lifeline Service from the Texas Universal Service Fund (TUSF) under §26.412 of this title (relating to the Lifeline Service Program). Only Resale ETPs as defined by §26.412(b)(2) of this title shall qualify to receive universal service support under this program.

(b) **Requirements for establishing ETP service areas.**

(1) Texas High Cost Universal Service Plan (THCUSP) service area. THCUSP service area shall be based upon wire centers (WCs) or other geographic area as determined appropriate by the commission. A telecommunications provider may be designated an ETP for any or all WCs contained within its certificated service area. An ETP must serve an entire WC or other geographic area as determined appropriate by the commission.

(2) Small and Rural ILEC Universal Service Plan (SRIUSP) service area. SRIUSP service area for an ETP serving in a small or rural ILEC's territory shall include the entire study area of such small or rural ILEC.

(c) **Criteria for designation of ETPs**. A Resale ETP as defined by §26.412(b)(2) of this title shall be eligible to receive TUSF support pursuant to §26.412 of this title for Lifeline Service only in each service area of a large company (THCUSP) or the study area of a small company (SRIUSP) for which it seeks ETP designation if it meets the following requirements:

(1) the Resale ETP defines its ETP service area pursuant to subsection (b) of this section and assumes the obligation to offer service to any customer in its ETP service area;

(2) offers Lifeline Services as provided by 47 C.F.R. Part 54, Subpart E; and

(3) advertises the availability of, and the charges for, supported services using media of general distribution.

(d) **Requirements for application for Resale ETP designation and commission processing of application.**

(1) **Requirements for notice and contents of application for Resale ETP designation.**

(A) **Notice of application.** Notice shall be published in the *Texas Register*. The presiding officer may require additional notice. Unless otherwise required by the presiding officer or by law, the notice shall include at a minimum a description of the service area for which the applicant seeks designation, the proposed effective date of the designation, and the following language: "Persons who wish to comment on this application should notify the Public Utility Commission by (specified date, ten days before the proposed effective date). Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136, or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477.

(B) **Contents of application.** A certificated provider of local exchange telephone service seeking to be designated as a Resale ETP shall file with the commission an application complying with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission staff

and one copy shall be delivered to the Office of Public Utility Counsel. The application shall:

(i) demonstrate that the applicant is a certificated provider of local exchange telephone service that resells basic local telecommunication services, as defined in §26.403 of this title (relating to Texas High Cost Universal Service Plan (THCUSP));

(ii) demonstrate that the applicant assumes the obligation to offer Lifeline Services, as defined in §26.412 of this title, to any customer in its certificated service area;

(iii) demonstrate that the applicant will advertise the availability of and the charges for designated services, as defined in §26.403 of this title, using media of general distribution;

(iv) contain a statement detailing the content of the notice the applicant proposes for publication in the *Texas Register* regarding the application as well as a brief statement explaining why the proposed notice is reasonable and that it complies with applicable law;

(v) provide a copy of the text of the notice;

(vi) state the proposed effective date of the designation; and

(vii) provide any other information the applicant wants considered in connection with the commission's review of its application.

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

(A) **Administrative review.** An application considered under this section may be reviewed administratively unless the certificated provider of local exchange telephone service requests the application be docketed or the presiding officer, for good cause, determines at any point during the review that the application should be docketed.

(i) The effective date of the Resale ETP designation shall be no earlier than 30 days after notice is published in the *Texas Register*.

(ii) The application shall be examined for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant shall be notified within ten working days of the filing date of the specific deficiency in its application. The earliest possible effective date of the application shall be no earlier than 30 days after notice is published in the *Texas Register*.

(iii) While the application is being administratively reviewed, the commission staff and the staff of the Office of Public Utility Counsel may submit requests for information to the applicant. Three copies of all answers to such requests for information shall be provided to the commission staff and the Office of Public Utility Counsel within ten days after receipt of the request by the applicant.

(iv) No later than 20 days after the completion of notice, interested persons may provide written comments or recommendations concerning the application to the commission staff. The commission staff shall, and the Office of Public Utility Counsel may, file with the presiding officer written comments or recommendations regarding the application.

(v) No later than 35 days after the proposed effective date of the application, the presiding officer shall issue an order approving, denying, or docketing the application.

(B) **Approval of application.** The application will be approved by the presiding officer if it meets all the following requirements:

(i) The provision of service constitutes basic local telecommunications service as defined in §26.403 of this title and Lifeline Service as defined in §26.412 of this title.

(ii) Notice was provided as required by this section.

(iii) The applicant has met the requirements contained in this subsection.

(iv) The ETP designation is consistent with the public interest in a technologically advanced telecommunications system and consistent with the preservation of universal service.

(C) **Docketing.** If, based on the administrative review, the presiding officer determines that one or more of the requirements has not been met, the presiding officer shall docket the application. The requirements of this subsection may not be waived.

(D) **Review of the application after docketing.** If the application is docketed, the effective date of the application shall be automatically suspended until an order is issued in the proceeding granting the application. Three copies of all answers to requests for information shall be filed with the commission within ten days after receipt of the request. Affected persons may move to intervene in the docket, and a hearing on the merits shall be scheduled. A hearing on the merits shall be limited to issues of eligibility. The application shall be processed in accordance with the commission's rules applicable to docketed cases.

(e) **Relinquishment of ETP designation.** A certificated provider of local exchange telephone service may seek to relinquish its ETP designation. The relinquishment of an ETP designation does not relieve the certificated provider from its obligation to provide Lifeline Service.

(f) **Relinquishment for non-compliance.** The TUSF administrator shall notify the commission when the TUSF administrator is aware that a Resale ETP is not in compliance with the requirements of subsection (c) of this section. The commission shall revoke the ETP designation of any Resale ETP determined not to be in compliance with subsection (c) of this section.

(g) **Requirements for annual affidavit of compliance to receive TUSF support.** A Resale ETP serving a rural or non-rural study area shall comply with the following requirements for annual compliance for the receipt of TUSF support for Lifeline Services:

(1) Annual Affidavit of Compliance. On or before September 1 of each year, a Resale ETP that receives disbursements from the TUSF shall file with the commission an affidavit certifying that the ETP is in compliance with the requirements for receiving money from the universal service fund and requirements regarding the use of money from each TUSF program from which the telecommunications provider receives disbursements.

(2) Filing Affidavit. The affidavit used shall be the annual compliance affidavit approved by the commission.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter P. TEXAS UNIVERSAL SERVICE FUND.

§26.420. Administration of Texas Universal Service Fund (TUSF).

(a) **Purpose.** The provisions of this section establish the administration of the Texas Universal Service Fund (TUSF).

(b) **Programs included in the TUSF.**

(1) Section 26.403 of this title (relating to the Texas High Cost Universal Service Plan (THCUSP));
(2) Section 26.404 of this title (relating to the Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan);
(3) Section 26.406 of this title (relating to the Implementation of the Public Utility Regulatory Act §56.025);
(4) Section 26.408 of this title (relating to Additional Financial Assistance (AFA));
(5) Section 26.410 of this title (relating to Universal Service Fund Reimbursement for Certain IntraLATA Service);
(6) Section 26.412 of this title (relating to Lifeline Service Program);
(7) Section 26.414 of this title (relating to Telecommunications Relay Service (TRS));
(8) Section 26.415 of this title (relating to Specialized Telecommunications Assistance Program (STAP));
(9) Section 26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF));
(10) Section 26.418 of this title (relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds);
(11) Section 26.420 of this title (relating to Administration of Texas Universal Service Fund (TUSF));
(12) Section 26.421 of this title (relating to Designation of Eligible Telecommunications Providers to Provide Service to Uncertificated Areas);
(13) Section 26.422 of this title (relating to Subsequent petitions for Service to Uncertificated Areas);
(14) Section 26.423 of this title (relating to High Cost Universal Service Plan for Uncertificated Areas Where an Eligible Telecommunications Provider Volunteers to Provide Basic Local Telecommunications Service); and
(15) Section 26.424 of this title (relating to Audio Newspaper Assistance Program).

(c) **Responsibilities of the commission.** The commission is the official governing agency for the TUSF, but may delegate the ministerial functions of TUSF administration to another entity (the TUSF administrator) through contractual agreement.

(1) **Monitoring, and supervising TUSF administration.** The commission reserves the exclusive power to revise rules related to the operation and administration of the TUSF and to monitor and supervise such operation and administration.
(2) **Annual audit.** The commission annually shall provide for an audit of the TUSF by an independent auditor. The costs of the audit are costs of the commission that are incurred in administering the TUSF, and therefore shall be reimbursed from the TUSF.
(3) **Inquiry into administration of the TUSF.** The commission may, upon its own motion, upon the petition of the commission staff or the Office of Public Utility Counsel, initiate an inquiry into any aspect of the administration of the TUSF. Any other party may initiate a complaint proceeding pursuant to the commission's procedural rules.
(4) **Selection of the TUSF administrator.**
(A) The commission shall have the sole discretion in the selection of the TUSF administrator. The selection of the TUSF administrator shall be based on a competitive bidding process.
(B) The TUSF administrator must meet the technical qualifications as provided in subsection (d)(1) of this section as well as other requirements as determined by the commission.

(5) **Contract term of the TUSF administrator.** The commission shall determine the duration of the TUSF administrator's contract. Prior to expiration of the contract term, the commission may discharge the TUSF administrator of its duties upon 60-days written notice.

(6) **Audit STAP voucher payments and expenditures**. The commission shall audit voucher payments and other expenditures made under the STAP program.

(d) **TUSF administrator.** The TUSF administrator serves at the discretion of the commission.

(1) **Technical requirements of the TUSF administrator**. The TUSF administrator shall:

(A) be neutral and impartial, not advocate specific positions to the commission in proceedings not related to the administration of the universal service support mechanisms, and not have a direct financial interest in the universal service support mechanisms established by the commission;

(B) possess demonstrated technical capabilities, competence, and resources to perform the duties of the TUSF administrator as described in this section; and

(C) be bonded or bondable.

(2) **Duties of the TUSF administrator.** The TUSF administrator will administer the TUSF in accordance with the rules set forth in this section and in accordance with the guidelines established by the commission in its contract with the TUSF administrator. The TUSF administrator's general duties shall include, but not be limited to:

(A) managing the daily operations and affairs of the TUSF in an efficient, fair and competitively neutral manner;

(B) taking steps necessary to ensure that all eligible telecommunications providers (ETPs) are in compliance with the relevant sections of this title under which they are receiving universal service support;

(C) calculating and collecting the proper assessment amount from every telecommunications provider and verifying that all telecommunications providers are in compliance with the Public Utility Regulatory Act §56.022;

(D) disbursing the proper support amounts, ensuring that only eligible recipients receive funds, and verifying that all recipients are in compliance with the section or sections of this title under which they are eligible to receive support;

(E) taking steps necessary, including audits, to ensure that all telecommunications providers that are subject to the TUSF assessment are accurately reporting required information;

(F) taking steps necessary, including audits, to ensure that all recipients of TUSF funds are accurately reporting required information;

(G) submitting periodic summary reports to the commission regarding the administration of the TUSF in accordance with specifications established by the commission;

(H) notifying the commission of any telecommunications providers that are in violation of any of the requirements of this section, §26.417 of this title and any reporting requirements; and

(I) performing other duties as determined by the commission.

(e) **Determination of the amount needed to fund the TUSF.**

(1) **Amount needed to fund the TUSF.** The amount needed to fund the TUSF shall be composed of the following elements.

(A) Costs of TUSF programs. The TUSF administrator shall compute and include the costs of the following TUSF programs:

(i) Texas High Cost Universal Service Plan, §26.403 of this title;

(ii) Small and Rural ILEC Universal Service Plan, §26.404 of this title;

(iii) Implementation of the Public Utility Regulatory Act §56.025, §26.406 of this title;

(iv) Additional Financial Assistance, §26.408 of this title;
(v) Reimbursement for Certain IntraLATA Service, §26.410 of this title;
(vi) Lifeline Service Program, §26.412 of this title;
(vii) Telecommunications Relay Service, §26.414 of this title;
(viii) Specialized Telecommunications Assistance Program (STAP), §26.415 of this title; and
(ix) Audio Newspaper Assistance Program, §26.424 of this title.

(B) Costs of implementation and administration of the TUSF. The TUSF implementation and administration costs shall include appropriate costs associated with the implementation and administration of the TUSF incurred by the commission (including the costs incurred by the TUSF administrator on behalf of the commission), and any costs incurred by the Texas Commission for the Deaf and Hard of Hearing caused by its administration of the Specialized Telecommunications Assistance Program (STAP) and the Telecommunications Relay Service programs.

(C) Reserve for contingencies. The TUSF administrator shall establish a reserve for such contingencies as late payments and uncollectibles in an amount authorized by the commission.

(2) **Determination of amount needed.** After the initial determination, the TUSF administrator shall determine, on a periodic basis, the amount needed to fund the TUSF. The determined amount shall be approved by the commission.

(f) **Assessments for the TUSF.**

(1) **Providers subject to assessments.** The TUSF assessments shall be payable by all telecommunications providers having access to the customer base; including but not limited to wireline and wireless providers of telecommunications services.

(2) **Definitions.** For the purposes of this section the following definitions apply:

(A) Actual intrastate telecommunications services receipts - Telecommunications services receipts that are clearly identifiable as intrastate telecommunications services receipts, as defined in subparagraph (E) of this paragraph.

(B) FCC - means the Federal Communications Commission.

(C) Interstate communications - Has the meaning assigned by 47 U.S.C. §153(22).

(D) International communications -- Has the meaning assigned by 47 U.S.C. §153(17) (foreign communications).

(E) Intrastate telecommunications services receipts -- Taxable telecommunications services receipts as reported by the telecommunications provider under Chapter 151 of the Texas Tax Code, with the exception of:

(i) Pay telephone service revenues received by providers of pay telephone services, which are exempt from the TUSF assessment pursuant to PURA §56.022(c)(2);
(ii) Telecommunications services receipts from interstate communications and international communications included in telecommunications services receipts reported under Chapter 151 of the Texas Tax Code; and
(iii) TUSF surcharges collected from customers.

(F) Receipts -- Has the meaning assigned by Texas Tax Code §151.007.

(G) Safe-Harbor intrastate telecommunications services receipts -- Means intrastate telecommunications receipts calculated by applying a commission-ordered percentage to telecommunications services receipts that are not clearly identifiable as intrastate.

(H) Telecommunications provider -- Has the meaning assigned by PURA §51.002(10).

(I) Telecommunications services -- Has the meaning assigned by Texas Tax Code §151.0103.

(3) **Basis for assessments.** Assessments will be based upon the following:

(A) **Actuals.** Effective January 1, 2007, assessments shall be made to each telecommunications provider based upon its monthly taxable actual intrastate telecommunications services receipts reported by that telecommunications provider under Chapter 151 of the Texas Tax Code.

(B) **Commission-Ordered Safe Harbor.** A telecommunications provider that is unable to calculate actual intrastate telecommunications services receipts by January 1, 2007, and does not meet the *de minimus* exemption in subsection (c) of this section, may request, and the commission may grant for good cause, the modification or waiver of the requirement set forth in subsection (a) of this section, to allow the telecommunications provider to calculate all or some of its intrastate taxable telecommunications receipts using the relevant commission-ordered safe-harbor percentage. Requests for waiver will be subject to administrative review unless the presiding officer determines at any point during the review that the request should be docketed. The presiding officer will issue an order approving, denying or docketing the request for waiver within 180 calendar days of the filing date of the waiver request.

(i) A request for waiver must contain, at a minimum:

(I) an affidavit from a corporate officer of the telecommunications provider attesting to the fact that the telecommunications provider is unable to calculate all or some of its actual intrastate telecommunications services receipts and, if applicable, that the telecommunications provider is using a safe harbor authorized by the FCC;

(II) a date by which the telecommunications provider will be able to calculate actual intrastate telecommunications services receipts;

(III) an explanation detailing why the telecommunications provider is unable to calculate actual intrastate telecommunications services receipts and why a waiver is necessary;

(IV) a detailed description of the safe-harbor percentage that is requested and how it will be applied;

(V) if applicable, a compliance tariff filing pursuant to paragraph (6)(C) of this subsection; and

(IV) any other information that the telecommunications provider believes will aid in rendering of a decision.

(ii) If a telecommunications provider requests a permanent waiver from reporting its TUSF assessment based on actual intrastate telecommunications services receipts, then the telecommunications provider must file a waiver containing all elements in clause (i) of this subparagraph, as well as an explanation detailing why a permanent waiver is required, and why it is in the public interest.

(iii) A telecommunications provider that has been granted a waiver shall apply, for the duration of that waiver, a safe-harbor percentage to its telecommunications services receipts using one of the methods described in subclauses (I) or (II) of this clause as follows:

(I) If a telecommunications provider is reporting interstate communications and international communications revenues for assessment for the federal universal service fund based on an FCC safe-harbor percentage, then the telecommunications provider shall apply the inverse of that percentage to its telecommunications services receipts as reported under Chapter 151 of the Texas Tax Code. The resulting total will be the telecommunications provider's safe-harbor-calculated total intrastate

telecommunications services receipts to which the TUSF assessment rate shall apply pursuant to paragraph (4) of this subsection.

(II) If a telecommunications provider is not using an FCC safe-harbor percentage, the telecommunications provider shall apply a commission-ordered safe harbor percentage to its telecommunications services receipts under Chapter 151 of the Texas Tax Code as described in its waiver request approved by the commission. The resulting total will be the telecommunications provider's safe-harbor-calculated intrastate telecommunications services receipts to which the TUSF assessment rate shall apply pursuant to paragraph (4) of this subsection.

(iv) If a telecommunications provider that has been granted a waiver seeks to change its safe-harbor assessment methodology, or seeks an extension of its existing waiver, it must file another waiver request with the commission.

(v) A telecommunications provider may, at any time during the duration of its waiver and upon notice to the commission and the TUSF administrator, change its methodology to assess actual intrastate telecommunications services receipts. This will terminate any existing waiver.

(C) ***De minimus* exemption**. A telecommunications provider that is unable to calculate actual intrastate telecommunications services receipts by January 1, 2007, and whose TUSF assessment is less than $500 per month using the relevant commission-ordered safe-harbor percentage, is not required to file a waiver request pursuant to subparagraph (B) of this paragraph.

(D) Intrastate telecommunications services receipts received by telecommunications providers from telecommunications services supplied to pay telephone providers for the provision of pay telephone services are subject to TUSF assessment.

(4) **Assessment**. Each telecommunications provider shall pay its TUSF assessment each month by multiplying the commission-approved assessment rate by the basis for assessments as determined pursuant to paragraph (3) of this subsection.

(5) **Reporting requirements.** Each telecommunications provider shall report its taxable intrastate telecommunications services receipts under Chapter 151 of the Tax Code to the commission or the TUSF administrator. When reporting its intrastate telecommunications services receipts, each telecommunications provider shall report its total taxable telecommunications services receipts under Chapter 151 of the Tax Code, and indicate which methodology or methodologies (*i.e.*, actual and/or commission-ordered safe-harbor percentage) it used to arrive at its total intrastate telecommunications services receipts.

(6) **Recovery of assessments.** A telecommunications provider may recover the amount of its TUSF assessment based on its intrastate telecommunications services receipts from its retail customers who are subject to tax under Chapter 151 of the Texas Tax Code, except for Lifeline and/or Link Up services. For purposes of the recovery of the TUSF assessment, pay telephone providers are considered retail customers subject to Chapter 151 of the Texas Tax Code. The commission may order modifications in a telecommunications provider's method of recovery.

(A) Retail customers' bills. In the event a telecommunications provider chooses to recover its TUSF assessment through a surcharge added to its retail customers' bills:

(i) the surcharge must be listed on the retail customers' bills as "Texas Universal Service"; and

(ii) the surcharge must be assessed as a percentage of intrastate telecommunications services receipts on every retail customers' bill, except Lifeline and/or Link Up services.

(B) Commission approval of surcharge mechanism. An ILEC choosing to recover the TUSF assessment through a surcharge on its retail customers' bills must file for commission approval of the surcharge mechanism.

(C) Tariff and/or price sheet changes. A certificated telecommunications utility choosing to recover the TUSF assessment through a surcharge on its retail customers' bills shall file the appropriate changes as necessary to its tariff and/or price sheet and provide supporting documentation for the method of recovery.

(D) Recovery period. A single universal service fund surcharge shall not recover more than one month of assessments.

(7) **Disputing assessments.** Any telecommunications provider may dispute the amount of its TUSF assessment. The telecommunications provider should endeavor to first resolve the dispute with the TUSF administrator. If the telecommunications provider and the TUSF administrator are unable to satisfactorily resolve their dispute, either party may petition the commission to resolve the dispute. Pending final resolution of disputed TUSF assessment rates and/or amounts, the disputing telecommunications provider shall remit all undisputed amounts to the TUSF administrator by the due date.

(g) **Disbursements from the TUSF to ETPs, ILECs, other entities and agencies.**

(1) **ETPs, ILECs, other entities, and agencies.**

(A) ETPs. The commission shall determine whether an ETP qualifies to receive funds from the TUSF. An ETP qualifying for the following programs is eligible to receive funds from the TUSF:

(i) Texas High Cost Universal Service Plan;

(ii) Small and Rural ILEC Universal Service Plan; and/or

(iii) Lifeline Service and Link Up Service.

(B) ILECs. The commission shall determine whether an ILEC qualifies to receive support from the following TUSF programs:

(i) Implementation of the Public Utility Regulatory Act §56.025; and/or

(ii) Additional Financial Assistance program.

(C) Other entities. The commission shall determine whether other entities qualify to receive funds from the TUSF. Entities qualifying for the following programs are eligible to receive funds from the TUSF:

(i) Telecommunications Relay Service;

(ii) Specialized Telecommunications Assistance Program; and/or

(iii) Audio Newspaper Assistance Program.

(D) Agencies. The commission, the Texas Department of Aging and Disability Services, the Texas Department of Assistive and Rehabilitative Services, and the TUSF administrator are eligible for reimbursement of the costs directly and reasonably associated with the implementation of the provisions of PURA Chapters 56 and 57.

(2) **Reporting requirements.**

(A) ETPs. An ETP shall report to the TUSF administrator as required by the provisions of the section or sections under which it qualifies to receive funds from the TUSF.

(B) Other entities. A qualifying entity shall report to the TUSF administrator as required by the provisions of the section or sections under which it qualifies to receive funds from the TUSF.

(C) Agencies. A qualifying agency shall report its qualifying expenses to the TUSF administrator each month.

(3) **Disbursements.**

(A) The TUSF administrator shall verify that the appropriate information has been provided by each ETP, local exchange company (LEC), other entities or agencies and shall issue

disbursements to ETPs, LECs, other entities and agencies within 45 days of the due date of their reports except as otherwise provided.

(B) Prior to August 31, 2007, if an electing LEC, as defined in §26.5 of this title (relating to Definitions), reduces rates in conjunction with receiving disbursements from the TUSF, the commission may not reduce the amount of those disbursements below the initial level of disbursements upon implementation of the TUSF, except that:

(i) if a local end user customer of the electing company switches to another local service provider that serves the customer entirely through the use of its own facilities and not partially or solely through the use of unbundled network elements, the electing LEC's disbursement may be reduced by the amount attributable to that customer under PURA §56.021(1); or

(ii) if a local end user customer of the electing company switches to another local service provider, and the new local service provider serves the customer partially or solely through the use of unbundled network elements provided by the electing LEC, the electing LEC's disbursement attributable to that customer under PURA §56.021(1) may be reduced according to the commission established equitable allocation formula for the disbursement as described in §26.403(e)(3)(C) of this title (relating to Texas High Cost Universal Service Plan (THCUSP)).

(C) The commission may adjust disbursements from the universal service fund to companies using technologies other than traditional wireline or landline technologies to meet provider of last resort obligations.

(h) **True-up.** The assessment amount determined pursuant to subsections (e) and (f) of this section shall be subject to true-up as determined by the TUSF administrator and approved by the commission. True-ups shall be limited to a three year period for under-reporting and a one year period for over-reporting.

(i) **Sale or transfer of exchanges.**

(1) An ETP that acquires exchanges from an unaffiliated small or rural ILEC receiving support for those exchanges pursuant to §26.404 of this title, shall receive the per-line support amount for which those exchanges were eligible prior to the sale or transfer.

(2) An ETP that acquires exchanges from an unaffiliated ETP receiving support for those exchanges pursuant to §26.403 of this title, shall receive the per-line support amount for which those exchanges were eligible prior to the transfer of the exchanges.

(j) **Proprietary information.** The commission and the TUSF administrator are subject to the Texas Open Records Act, Texas Government Code, Chapter 552. Information received by the TUSF administrator from the individual telecommunications providers shall be treated as proprietary only under the following circumstances:

(1) An individual telecommunications provider who submits information to the TUSF administrator shall be responsible for designating it as proprietary at the time of submission. Information considered to be confidential by law, either constitutional, statutory, or by judicial decision, may be properly designated as proprietary.

(2) An individual telecommunications provider who submits information designated as proprietary shall stamp on the face of such information "PROPRIETARY PURSUANT TO PUC SUBST. R. §26.420(j)".

(3) The TUSF administrator may disclose all information from an individual telecommunications provider to the telecommunications provider who submitted it or to the commission and its designated representatives without notifying the telecommunications provider.

(4) All third party requests for information shall be directed through the commission. If the commission or the TUSF administrator receives a third party request for information that a telecommunications provider has designated proprietary, the commission shall notify the telecommunications provider. If the telecommunications provider does not voluntarily waive the proprietary designation, the commission shall submit the request and the responsive information to the Office of the Attorney General for an opinion regarding disclosure pursuant to the Texas Open Records Act, Texas Government Code, Chapter 552, Subchapter G.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter P. TEXAS UNIVERSAL SERVICE FUND.

§26.421. Designation of Eligible Telecommunications Providers to Provide Service to Uncertificated Areas.

(a) **Purpose.** The provisions of this section establish the procedures for the commission to designate an eligible telecommunications provider (ETP) to provide voice-grade services to permanent residential or business premises that are not included within the certificated area of a holder of a certificate of convenience and necessity (CCN), and for the reimbursement of costs from the Texas Universal Service Fund (TUSF).

(b) **Definitions.** The following words and terms, when used in this section, shall have the following meaning unless the context clearly indicates otherwise:

(1) **Designated provider** -- A telecommunications provider designated by the commission to provide services to premises located within an uncertificated area

(2) **Eligible telecommunications provider (ETP)** -- A telecommunications provider designated by the commission pursuant to §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).

(3) **Permanent residential or business premises** -- A premises that has permanent facilities for water, wastewater, and electricity.

(4) **Preferred provider** -- A designated provider for any permanent residential or business premises within reasonable proximity to those petitioning premises for later petitions filed under §26.422 of this title (relating to Subsequent Petitions for Service in Uncertificated Areas).

(c) **Application.** This section applies to telecommunications providers that have been designated ETPs by the commission pursuant to §26.417 of this title. This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Act (PURA) §52.154.

(d) **Petition for service.**

(1) **Eligibility.** Persons residing in permanent residential premises or owners of permanent residential or business premises that are not included within the certificated area of a holder of a CCN may petition the commission to designate an ETP to provide to those premises voice-grade services supported by state and federal universal service support mechanisms.

(2) **Contents of petition.** A petition for designation of an ETP must:

(A) State with reasonable particularity the locations of the permanent residential or business premises for which the petitioner(s) are requesting service;

(B) Establish that the premises are within reasonable proximity to one another so that the petitioners possess a sufficient community of interest;

(C) Nominate as potential providers of service, not more than five telecommunications providers serving territory that is contiguous to the location of the permanent residential or business premises using wireless or wireline facilities, resale, or unbundled network elements; and

(D) Include as an attachment or an appendix, documentation indicating the required residence or ownership, such as a state-issued license or identification, tax records, deeds, or voter registration materials.

(3) **Eligibility of petitioner(s)**. Except as provided by paragraph (4) of this subsection, the petition must be signed by at least five persons who:

(A) Are not members of the same household;

(B) Reside in the permanent residential premises or are the owners of the permanent residential or business premises for which service is sought;

(C) Desire service to those premises;

(D) Commit to pay the aid to construction charges for service to those premises as determined by the commission; and

(E) Commit to enter into an assignable agreement for subscription to basic local service to the premises for a period of time determined by the commission.

(4) **Number of petitioners.** The commission may accept a petition that is signed by fewer than five persons if the petitioner(s) provides an affidavit stating that the petitioner(s) has taken all reasonable steps to secure the signatures of the residents of permanent residential premises or the owners of permanent residential or business premises within reasonably close proximity to the petitioner's premises who are not receiving telephone service when the petition is filed and who want telephone service initiated.

(5) **Form.** The petitioner(s) shall file the petition using the commission-approved forms.

(e) **Completeness of petition.**

(1) **Commission action.** Upon receipt of a petition, the commission shall review the petition for completeness. Within 15 working days from the date of receipt of the petition, the commission shall determine if the petition is complete and has been filed consistent with subsection (d) of this section.

(2) **Petition complete**. If the commission determines the petition is complete, the commission will send a notice of completeness to the petitioner(s), to all telecommunications providers identified in the petition, and if not otherwise notified, to the incumbent local exchange carriers serving the contiguous exchanges. In the notice, the commission shall seek volunteers to provide telecommunications services in the permanent residential or business premises. The commission shall also include with the notice a copy of the petition. The commission shall publish notice of the petition and the notice of completeness in the Texas Register.

(3) **Petition denied.** If a petition is denied, the commission shall send a notice of denial explaining the reason(s) for denial to the petitioner(s).

(f) **Responding to notice of completeness.**

(1) **Response**. Telecommunication providers shall respond to the commission's notice of completeness and request for volunteers within 30 days after receipt of the notice. A provider may respond by:

(A) Stating that it is not eligible to be designated to serve the premises under this section;

(B) Volunteering to provide service to the premises; or

(C) Refusing to volunteer to provide service to the premises.

(2) **Volunteering to serve.** A provider volunteering to provide service to the premises shall respond to the commission by providing a proposal that includes:

(A) An affidavit duly signed by an officer of the company;

(B) A description of the technology proposed for deployment;

(C) An estimate of the costs for deployment and the recurring monthly costs of service; and

(D) An estimated timeline for deployment of facilities and a date by which service will be extended to the premises.

(3) **Commission action.** Upon receipt of a volunteering provider's proposal, the commission may:

(A) Approve a proposal administratively and permit the ETP to serve the uncertificated area and recover its costs pursuant to subsection (j) of this section; or

(B) Reject a proposal and proceed to a hearing pursuant to subsection (g) of this section.

(g) **Evidentiary hearing.** If the petition cannot be processed administratively, the commission shall conduct an evidentiary hearing to determine:

(1) If an ETP is willing to be designated to provide service to the petitioner(s); or

(2) The ETP that is best able to serve the petitioner(s).

(h) **Commission decision.** The commission should consider all relevant factors, including, but not limited to:
- (1) The original cost to be incurred by a designated provider to deploy service to the petitioning premises, and the effect of reimbursement of those costs on the state universal service fund;
- (2) The number of access lines requested by the petitioners for the petitioning premises;
- (3) The size of the geographic territory in which the petitioning premises are included;
- (4) The proximity of existing facilities and the existence of a preferred designated provider under the Public Utility Regulatory Act (PURA) §56.213; and
- (5) Any technical barriers to the provision of service.

(i) **Commission order.** The commission shall issue an order granting or denying a petition within 180 days of the filing of the petition. In any order granting a petition the commission shall include the following:
- (1) Description of the facilities to be deployed;
- (2) Estimated costs of deployment;
- (3) Aid to construction fee to be paid by the petitioner(s), not to exceed $3,000;
- (4) Monthly recurring charge to be paid by the petitioner(s);
- (5) Estimated cost to be recovered from the TUSF;
- (6) Recurring, monthly per line fee to be recovered from the TUSF;
- (7) Date by which services must be extended to the premises; and
- (8) Schedule of cost recovery for the provider's original cost of deployment consistent with the following:
  - (A) Not later than the third anniversary of the date of the order, for a deployment with an estimated original cost of $1 million or less;
  - (B) Not later than the fifth anniversary of the date of the order, for a deployment with an estimated original cost of more than $1 million, but not more than $2 million; and
  - (C) Not later than the seventh anniversary of the date of the order, for a deployment with an estimated original cost of more than $2 million.

(j) **Cost recovery.** A designated provider may recover from the TUSF the provider's actual costs of providing service to the premises, including the provider's original cost of deployment not recovered from the petitioner(s) through an aid to construction charge and the provider's actual recurring costs not recovered from the petitioner(s) through a monthly recurring charge.
- (1) The original cost of deployment includes the cost of the provider's facilities installed in, or upgraded to permit the provision of service to, the premises, as determined by the financial accounting standards applicable to the provider, including an amount for the recovery of all costs that are typically included as capital costs for accounting purposes.
- (2) The provider is permitted to recover interest at the prevailing commercial lending rate on its original costs of deployment.
- (3) Actual recurring costs include maintenance and the ongoing operational costs of providing service after deployment of the facilities to the premises and a reasonable operating margin.

(k) **Submission of actual costs**. Upon completion of the construction, the designated provider shall file the actual costs with the commission.
- (1) No later than 30 days after filing the actual costs, commission staff shall file with the presiding officer written comments or recommendations concerning the actual costs.
- (2) No later than 60 days after filing the actual costs, the presiding officer shall issue a notice stating whether the costs may be submitted to the TUSF administrator for recovery consistent with the order issued pursuant to subsection (i) of this section.
- (3) The designated provider or the commission staff may appeal to the commission an administrative notice issued by a presiding officer within seven days after the date the notice is issued. The commission shall rule on any appeal added to an open meeting agenda, within 30 days after the

date the appeal is filed. If the commission or a presiding officer orders changes to the actual costs submitted, the designated provider shall be ordered to make those changes within a reasonable period of time before they may be submitted to the TUSF administrator for recovery.

(l) **Cap on TUSF reimbursements.** The commission may not authorize or require any services to be provided under this section during a fiscal year if the total amount of required reimbursements, together with interest and obligations from preceding years, would equal an amount that exceeds 0.02% of the annual gross revenues reported to the TUSF during the preceding fiscal year.

§26.422. Subsequent Petitions for Service in Uncertificated Areas.

(a) This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Act (PURA) §52.154.

(b) If the commission approves a petition requesting service, residents of permanent residential premises or owners of permanent residential or business premises in reasonable proximity to the premises that were the subject of an approved petition who did not sign the prior petition requesting service are not entitled to receive service under the Public Utility Regulatory Act (PURA), Chapter 56, Subchapter F, prior to the fifth anniversary of the date the prior petition was filed, unless the residents or owners file a new petition and agree to pay aid to construction charges on the same terms as applicable to the prior petitioner(s).

(c) The designated provider shall receive reimbursement for the original cost of deployment and actual recurring costs of providing service to those additional residents in the same manner as the provider received reimbursement of those costs in relation to the prior petitioner(s). The provider may not receive reimbursement for the original cost of deployment under a subsequent petition if the provider previously received complete reimbursement for those costs from the Texas Universal Service Fund (TUSF). If the TUSF has completely reimbursed the original cost of deployment as provided by §26.421 of this title (relating to Designation of Eligible Telecommunications Providers to Provide Service to Uncertificated Areas), each subsequent petitioner must pay into the TUSF an amount equal to the aid to construction charge paid by each prior petitioner.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter P. TEXAS UNIVERSAL SERVICE FUND.

§26.423. High Cost Universal Service Plan for Uncertificated Areas where an Eligible Telecommunications Provider (ETP) Volunteers to Provide Basic Local Telecommunications Service.

(a) **Purpose.** This section establishes the guidelines for financial assistance to ETPs that serve uncertificated areas of the state where an ETP volunteers to provide basic voice-grade telecommunications service to permanent residential and single-line business premises.

(b) **Definitions.** The following words and terms, when used in this section, shall have the following meaning unless the context clearly indicates otherwise:

(1) **Eligible line** -- A residential line and a single-line business line as defined by §26.403 of this title (relating to Texas High Cost Universal Service Plan (THCUSP)).

(2) **Eligible telecommunications provider (ETP)** -- A telecommunications provider designated by the commission pursuant to §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).

(3) **Permanent residential or business premises** -- A premise as defined pursuant to §26.421 of this title (relating to Designation of Eligible Telecommunications Providers to Provide Service to Uncertificated Areas).

(4) **Uncertificated areas** -- An area of the state that is not included within the certificated area of a holder of a certificate of convenience and necessity (CCN).

(c) **Application.** This section applies to telecommunications providers that have been designated ETPs by the commission pursuant to §26.417 of this title. This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Act (PURA) §52.154.

(d) **Service to be supported by the High Cost Universal Service Plan for uncertificated areas where an ETP volunteers to provide basic local telecommunications service.** The High Cost Universal Service Plan for uncertificated areas shall support the provision by ETPs of basic local telecommunications services as defined in §26.403(d) of this title.

(e) **Support for uncertificated areas where an ETP volunteers to provide service.** The TUSF administrator shall disburse monthly support payments to ETPs qualified to receive support pursuant to this section. The amount of support available to each ETP shall be calculated using the base support amount available as provided under paragraph (1) of this subsection as adjusted by the requirements of paragraph (3)(B) of this subsection.

(1) **Determining base support amount available to ETPs.**

(A) The monthly per-line support available for uncertificated areas shall be determined by calculating the average of the per-line support amount approved for all local telephone company exchanges of CCN holder's that are contiguous to the uncertificated area for which reimbursement is requested. The per line support amounts used for this calculation shall include, as appropriate, support amounts approved for only those exchanges directly contiguous to the uncertificated area for which support is being requested. The resulting average support shall apply to a line at a premises in the uncertificated area regardless of the residential or business status of the line.

(B) Support under this section is portable with the consumer.

(2) **Proceedings to determine support amount.**

(A) Initial determination for uncertificated areas.

(i) Upon petition by an ETP, the commission shall establish a monthly per-line support amount for an uncertificated area as identified by the ETP where it has been determined that prospective telecommunications subscribers exist. The

establishment of support for more than one uncertificated area may be requested within a single petition.

(ii) The review of the petition shall be accomplished in an administrative or docketed proceeding initiated by the ETP requesting support for the provision of single-line residential or business service within an uncertificated area or areas.

(iii) The commission, on its own motion, may initiate a proceeding to establish monthly per-line support amounts for uncertificated areas.

(B) Subsequent determination of support amount.

(i) The commission shall subsequently review the support for uncertificated areas consistent with the review provided for under §26.403 and §26.404 of this title (relating to Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan).

(ii) The commission may initiate review of the support for uncertificated areas and base support amounts under this section on its own motion at any time.

(3) **Calculating amount of support payments to individual ETPs.** After the monthly per-line amount is determined, the TUSF administrator shall make the following adjustments each month in order to determine the actual support payment that each ETP may receive each month.

(A) **Payments.** The payment to each ETP shall be computed by multiplying the per-line amount established by paragraph (1) of this subsection for a given uncertificated area by the number of eligible lines served by the ETP in such uncertificated area for the month.

(B) **Adjustment for federal USF support.** The base support amount an ETP is eligible to receive shall be decreased by the amount of federal universal service high cost support received by the ETP.

(f) **Reporting requirements.**

(1) An ETP eligible to receive support under this section shall provide the TUSF administrator with the following information:

(A) A report of the total number of eligible lines served by the ETP in a designated uncertificated area to the TUSF Administrator on a monthly basis;

(B) The telecommunications provider's residential and single-line business rates on file with the commission, as of the provisioning date for service;

(C) The average per-line assistance for each local exchange telephone company exchange contiguous to the area in question; and

(D) A calculation of the base support in accordance with the requirements of this subsection and subsection (e) of this section.

(2) Upon request by the commission, the telecommunications provider awarded support under this section shall explain the basis on which it is establishing rates under this section.

(3) An ETP shall report any other information required by the commission and the TUSF Administrator, including any information necessary to assess contributions to and disbursements from the TUSF.

(g) **Initial support provided pursuant to this section.** Initial payment of support under this section shall be retroactive to the latter of the date on which a telecommunications provider either:

(1) Petitions the commission for THCUSP assistance; or

(2) Begins providing basic local telephone service to the residential or business location approved for support.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter P. TEXAS UNIVERSAL SERVICE FUND.

§26.424. Audio Newspaper Assistance Program.

(a) **Purpose.** The provisions of this section establish a program providing financial assistance from the Texas universal service fund to support a free telephone service that allows blind and visually impaired persons access to the text of newspapers by using synthetic speech.

(b) **Definitions.** The following words and terms shall have the following meanings when used in this section, unless the context clearly indicates otherwise.

(1) **Texas Newspaper** — a serial publication that contains news on current events of special or general interest published within the state of Texas;

(2) **National Newspaper** — a serial publication that contains news on current events of special or general interest that is widely distributed in all fifty states;

(3) **Registered User** — a person who has met the eligibility criteria pursuant to subsection (e) of this section and has registered with the Audio Newspaper Program; and

(4) **Audio Newspaper Program (ANP) Provider** — the carrier awarded the Audio Newspaper Program contract by the commission.

(c) **Requirements Audio Newspaper Program (ANP) Provider Must Meet.** The provider of the ANP shall meet all of the requirements listed below.

(1) **Components of ANP.**

(A) The ANP shall provide registered users the following:

(i) access to ANP through a touch-tone phone;

(ii) access to ANP 24 hours a day, seven days a week;

(iii) access through a local number or through a nationwide toll-free number where local access is not available; and

(iv) access through a personal identification number.

(B) The ANP shall make available to registered users the following call features:

(i) complete text of each participating newspaper in the form of synthetic speech;

(ii) menu choices and navigation features that facilitate movement through menu items or articles;

(iii) ability to select one voice from a variety of choices and adjust the speaking rate of the selected voice;

(iv) commands for obtaining help, searching text, and spelling text with the capacity to interrupt the presentation and return to the information being read when the help, search, or spell command is activated; and

(v) access to customer service during regular business hours.

(C) The ANP shall also have the following additional features:

(i) capability of providing information to determine the number of registered users; and

(ii) capability of providing information to determine the monthly minutes of use.

(2) **Content.** The ANP shall provide access to the contents of both Texas newspapers and National newspapers:

(A) **Texas Newspapers.** the ANP shall have a minimum of two Texas newspapers available to registered users; and

(B) **National Newspapers.** the ANP may allow registered users access to National newspapers to the extent they are available.

(3) **Updates.** The ANP provider will update each newspaper carried as soon as practicable following the ANP's receipt of electronic files and will provide access to the current day's or most recent edition, the previous day's edition, and the current or most recent Sunday edition.

(4) **Content Acquisition.** The ANP provider shall attempt to integrate additional Texas newspapers, including Spanish language newspapers, into the ANP. Newspapers participating in the ANP are not eligible for payment.

(d) **Reporting Requirements.** The ANP provider shall submit the following reports to the commission every year by April 1:

(1) **Content Acquisition Report.** The content acquisition report shall consist of the following:

(A) a list of the newspapers included in the ANP and indicate those newspapers added to the ANP during the previous 12 months;

(B) a list of the newspapers the ANP has attempted, but failed, to add to the ANP including for each:

(i) date(s) the newspaper was contacted;

(ii) method(s) used to contact the newspaper; and

(iii) reason(s) why the newspaper was not added to the ANP.

(C) a list of the newspapers that the ANP stopped providing in the previous year, including for each:

(i) date the ANP stopped providing the newspaper; and

(ii) reason(s) why ANP stopped providing the newspaper.

(2) **Annual Usage Report.** The annual usage report shall consist of the following:

(A) the number of registered users;

(B) the number of registered users in the previous year; and

(C) the total minutes of use for all registered users.

(3) **Additional Reporting.** The commission may specify additional reporting requirements.

(e) **Eligibility and Registration.**

(1) **Eligibility.** A person will be considered eligible for the ANP if the person produces evidence satisfactory to the ANP that said person resides within the state of Texas and:

(A) is registered with a state or private vocational rehabilitation agency for the blind;

(B) is enrolled in a public school special education program for the blind or state residential school for the blind;

(C) is registered with the Texas State Library and Archives Talking Book Program; or

(D) is in possession of a letter from an M.D. or a D.O. certifying that said person is legally blind or is visually impaired.

(2) **Registration.** The ANP provider shall allow eligible persons to register for the ANP through a mailing address or a fax number.

(3) **Records Showing Eligibility**. For each registered user, the ANP provider shall retain (a) electronic and/or photocopy records of all evidence produced to the ANP provider that satisfies the eligibility requirements described in this subsection and (b) the registered user's contact information. The ANP provider shall produce these records and contact information upon request by the commission.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter Q. 9-1-1 ISSUES

§26.431. Monitoring of Certain 911 Fees.

-REPEALED-

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter Q. 9-1-1 ISSUES

§26.433. Roles and Responsibilities of 9-1-1 Service Providers.

(a) **Purpose.** The provisions of this section are intended to assure the integrity of the state's emergency 9-1-1 system in the context of a competitive and technologically evolving telecommunications market. In particular this section establishes specific reporting and notification requirements and mandates certain minimum network interoperability, service quality standards, and database integrity standards. The requirements in this section are in addition to the applicable interconnection requirements required by §26.272 of this title (relating to Interconnection).

(b) **Application.** This section applies to all certificated telecommunications utilities (CTUs).

(c) **9-1-1 service provider certification requirements.**

(1) Only a CTU may be a 9-1-1 database management services provider.

(2) Only a CTU may be a 9-1-1 network services provider.

(3) Unless acting as a 9-1-1 database management services provider or 9-1-1 network services provider, PSAPs and 9-1-1 administrative entities do not require certification by the commission.

(d) **Requirement to prepare plan and reporting and notification requirements.**

(1) **Network Services Plan.** Before providing service, a 9-1-1 network services provider shall prepare and file with the commission a network services plan. The plan shall be updated upon a change affecting a 9-1-1 administrative entity or entities, a 9-1-1 database management services provider, or the 9-1-1 network services provider, but not more often than quarterly of each year. Material submitted to the commission pursuant to this section believed to contain proprietary or confidential information shall be identified as such, and the commission may enter an appropriate protective order. The network services plan shall include:

(A) a description of the network services and infrastructure for equipment and software being used predominantly for the purpose of providing 9-1-1 services, including but not limited to, alternate routing, default routing, central office identification, and selective routing, ESN, and transfer information;

(B) a schematic drawing and maps illustrating current 9-1-1 network service arrangements specific to each 9-1-1 administrative entity's jurisdiction for each applicable rate center, city, and county. The maps shall show the overlay of rate center, county, and city boundaries; and

(C) a schedule of planned network upgrades and modifications that includes an explanation of 9-1-1 customer premises equipment implications, if any, related to upgrades and modifications.

(2) **Database Services Plan.** Before providing service, a 9-1-1 database management services provider shall prepare and file with the commission a database services plan. The plan shall be updated upon a change affecting a 9-1-1 administrative entity or entities, a 9-1-1 database management services provider, or the 9-1-1 network services provider, but not more often than quarterly of each year. Material submitted to the commission pursuant to this section believed to contain proprietary or confidential information shall be identified as such, and the commission may enter an appropriate protective order. The database services plan shall include:

(A) a narrative description of the current database services provided, including but not limited to a description of current 9-1-1 database management service arrangements and each NPA/NXX by selective router served by the database management services provider;

(B) a schematic drawing and maps of current 9-1-1 database service arrangements specific to the applicable agency's jurisdiction for each applicable rate center, city, and county. The maps shall show the overlay of rate center, county, and city boundaries;

(C) a current schedule of planned database management upgrades and modifications, including software upgrades;

(D) an explanation of 9-1-1 customer premises equipment implications, if any, related to any upgrades and modifications referenced in subparagraph (C) of this paragraph; and

(E) a description of all database contingency plans for 9-1-1 emergency service.

(3) **Other notification requirements.** A CTU shall notify all affected 9-1-1 administrative entities at least 30 days prior to activating or using a new NXX in a rate center or upon the commencement of providing local telephone service in any rate center.

(e) **Network interoperability and service quality requirements.** In order to ensure network interoperability and a consistent level of service quality the following standards shall apply.

(1) A CTU operating in the state of Texas shall:

(A) Participate, as technically appropriate and necessary, in 9-1-1 network and 9-1-1 database modifications; including, but not limited to, those related to area code relief planning, 9-1-1 tandem reconfiguration, and changes to the 9-1-1 network services or database management services provider.

(B) Notify and coordinate changes to the 9-1-1 network and database with, as necessary and appropriate, its wholesale customers, all affected 9-1-1 administrative entities, and CSEC.

(C) Provide a P.01 grade of service, or its equivalent as applicable, on the direct dedicated 9-1-1 trunk groups.

(D) The 9-1-1 network services provider shall provide a P.01 grade of service, or its equivalent as applicable, to the PSAP.

(E) Apprise all affected 9-1-1 administrative entities of any failure to meet the P.01 grade of service, or its equivalent as applicable, in writing and correct any degradation within 60 days.

(2) A telecommunications provider operating in the state of Texas shall:

(A) Provide to all applicable 9-1-1 administrative entities the name, title, address, and telephone number of the telecommunications provider's 9-1-1 contacts including but not limited to, a designated contact person to be available at all times to work with the appropriate 9-1-1 administrative entity or entities, CSEC and the commission to resolve 9-1-1-related emergencies. CSEC shall be notified of any change to a telecommunications provider's designated 9-1-1 contact personnel within five business days.

(B) Develop a 9-1-1 disaster recovery and service restoration plan with input from the applicable 9-1-1 administrative entity or entities, CSEC, and the commission.

(f) **Database integrity.** In order to ensure the consistent quality of database information required for fixed-location 9-1-1 services, the following standards apply.

(1) A CTU operating in the state of Texas shall:

(A) Utilize a copy of the 9-1-1 administrative entity's MSAG or other appropriate governmental source, such as post offices and local governments, to confirm that valid addresses are available for 9-1-1 calls for areas where the 9-1-1 service includes selective routing, or automatic location identification, or both, in order to confirm that valid addresses are available for 9-1-1 calls. This requirement is applicable where the 9-1-1 administrative entity has submitted an MSAG for the service area to the designated 9-1-1 database management services provider. The MSAG must be made available to the CTU at no charge and must be in a mechanized format that is compatible with the CTU's systems. This requirement shall not be construed as a basis for denying installation of basic telephone service, but as a process to minimize entry of erroneous records into the 9-1-1 system.

(B) Take reasonable and necessary steps to avoid submission of telephone numbers associated with non-dialtone generating service to the 9-1-1 database management services provider.

(C) Submit corrections to inaccurate subscriber information to the 9-1-1 database management services provider within 72 hours of notification of receipt of the error file from the 9-1-1 database management services provider.

(D) As applicable, coordinate 9-1-1 database error resolution for resale customers.

(2) A 9-1-1 database management services provider operating in the state of Texas shall:

(A) Provide copies of the MSAG(s) for the 9-1-1 administrative entities it serves to any CTU authorized to provide local exchange service within the jurisdiction of those 9-1-1 administrative entities. The 9-1-1 database management services provider shall make all updates to the MSAG electronically available to CTUs within 24 hours of update by the 9-1-1 administrative entity.

(B) Upon receipt of written confirmation from the appropriate CTU, delete inaccurate subscriber information within 24 hours for deletions of fewer than 100 records. For deletions of 100 records or more, the database management service provider shall delete the records as expeditiously as possible within a maximum time frame of 30 calendar days.

(g) **Cost recovery.** A CTU may not charge a 9-1-1 administrative entity, through tariffed or non-tariffed charges, for the preparation and transfer of files from the CTU's service order system to be used in the creation of 9-1-1 call routing data and 9-1-1 ALI data.

(h) **Unbundling.** A dominant CTU that is a 9-1-1 network services provider and a 9-1-1 database management services provider, if it has not already done so prior to the effective date of this section, must file within 90 days from the effective date of this section an alternative 9-1-1 tariff that provides 9-1-1 administrative entities the option to purchase any separately offered and priced 9-1-1 service.

(i) **Migration of 9-1-1 Service.** Unless otherwise determined by the commission, nothing in this rule, any interconnection agreement, or any commercial agreement may be interpreted to impair a 9-1-1 administrative entity's authority to migrate to newer functionally equivalent IP-based 9-1-1 systems and/or NG9-1-1 systems, or to require the removal of unnecessary direct 9-1-1 dedicated trunks, circuits, databases, or functions.

(1) For purposes of this subsection, "unnecessary direct dedicated 9-1-1 trunks" means those dedicated 9-1-1 trunks that generally would be part of a local interconnection arrangement but for: the CTU's warrant in writing that the direct dedicated 9-1-1 trunks are unnecessary and all 9-1-1 traffic from the CTU will be accommodated by another 9-1-1 service arrangement that has been approved by the appropriate 9-1-1 administrative entity or entities; and written approval from the appropriate 9-1-1 entity or entities accepting the CTU's warrant. A 9-1-1 network services provider or CTU presented with such written documentation from the CTU and the appropriate 9-1-1 administrative entity or entities shall rely on the warrant of the CTU and the appropriate 9-1-1 entities.

(2) Paragraph (1) of this subsection is intended to promote and ensure collaboration so that 9-1-1 service architecture and provisioning modernization can proceed expeditiously for the benefit of improvements in the delivery of 9-1-1 emergency services. Paragraph (1) of this subsection is not intended to require or authorize a 9-1-1 administrative entity's rate center service plan specifications or a 9-1-1 network architecture deviation that causes new, material cost shifting between telecommunications providers or between telecommunications providers and 9-1-1 administrative entities. Examples of such a deviation would be points of interconnection different from current LATA configurations and requiring provisioning of the 9-1-1 network with a similar type deviation that may involve new material burdens on competition or the public interest.

(j) **9-1-1 Service Agreement.**

(1) A CTU that provides local exchange service to end users must execute a separate 9-1-1 service agreement with each appropriate 9-1-1 administrative entity and collect and remit required 9-1-1 emergency service fees to the appropriate authority pursuant to such 9-1-1 service agreement.

(2) A CTU that provides resold local exchange service to end users must execute a separate 9-1-1 service agreement with each appropriate 9-1-1 administrative entity and collect and remit required 9-1-1 emergency service fees to the appropriate authority pursuant to such 9-1-1 service agreement.

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CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter Q. 9-1-1 ISSUES

§26.435. Cost Recovery Methods for 9-1-1 Dedicated Transport.

(a) **Purpose.** The purpose of this section is to establish uniform cost recovery methods for direct dedicated 9-1-1 trunks approved by the appropriate 9-1-1 administrative entity or entities and used in the provision of 9-1-1 service to end users by certificated telecommunications utilities (CTUs). The maximum nonrecurring and monthly recurring reimbursable charges in subsection (c)(1) of this section apply only when the points of interconnection are not a material change to the current provisioning of 9-1-1 services or the points of interconnection are within the current local access and transport areas LATAs. In the event that a CTU considers a request by a 9-1-1 administrative entity or entities to be a material change, the CTU within sixty days of receipt of the request may file an application with the commission requesting a revised reimbursement rate. The CTU is not required to begin provisioning until the commission issues its final order on the application, unless the 9-1-1 administrative entity or entities agree to pay the CTU's proposed revised reimbursement rate, subject to true-up once the commission approves a reimbursement rate for the provisioning.

(b) **Application.** This section applies to all CTUs that are facilities based and providing local exchange service.

(c) **Reimbursable costs.**

(1) **9-1-1/CTU Reimbursement.** Subject to the applicable law regarding payments by a 9-1-1 administrative entity, the appropriate 9-1-1 administrative entity or entities shall reimburse a CTU a maximum non-recurring rate of $165 and recurring rate of $39 per month as the total compensation for each direct dedicated 9-1-1 trunk unless:

(A) the CTU files a petition with the commission and notice of such filing with the appropriate 9-1-1 administrative entity or entities for the imposition of a different rate no later than June 1 of the calendar year; and

(B) the CTU provides evidence to the commission that, based upon certain technology deployment, a different rate should apply; and

(C) after appropriate review, including comment from the appropriate 9-1-1 administrative entity or entities, the commission approves such rate as requested by the CTU.

(2) Any commission approved change in rate for compensation for direct dedicated 9-1-1 trunk(s) shall become effective no earlier than October 1 of the same calendar year.

(3) **Inter-CTU Allocation methodology**. Each CTU that originates a 9-1-1 call shall receive a pro rata share of the commission approved recurring rate(s) under paragraph (1) or (2) of this subsection for 9-1-1 dedicated transport of the call, based upon the transport mileage between the CTU's end office or point of presence (POP) to the point of interconnection and the 9-1-1 network service provider's transport mileage from the point of interconnection to the E9-1-1 selective router, 9-1-1 tandem, IP-based 9-1-1 system, or NG9-1-1 system. The transport mileage used to calculate the pro rata share shall not exceed 14 miles from the originating CTU end office or POP to the point of interconnection.

(A) The points of interconnection for local traffic in existing interconnection agreements are acceptable for the purposes of calculating the pro rata share of reimbursable costs, unless the CTUs mutually agree to different points of interconnection.

(B) To the extent a CTU provisions its own direct dedicated 9-1-1 trunk(s), the CTU is required to compensate such provider for port usage and termination charges. The 9-1-1 network services provider shall assess such charges on a Total Element Long Run Incremental Cost (TELRIC) basis.

(C) To the extent a CTU leases direct dedicated 9-1-1 trunk(s) from a 9-1-1 network services provider, the CTU is required to compensate such provider for transport, port usage, and

termination charges. The 9-1-1 network services provider shall assess such charges on a TELRIC basis.

(D) To the extent a CTU leases from a 9-1-1 network services provider direct dedicated 9-1-1 trunk extending from the CTU's end office or POP to the point of interconnection, the 9-1-1 network services provider shall assess such charges on a TELRIC basis.

(E) A competitive local exchange carrier (CLEC) may lease or provision its own direct dedicated 9-1-1 trunks to the point of interconnection or directly to the 9-1-1 network services provider's E9-1-1 selective router, 9-1-1 tandem, IP-9-1-1 based system, or NG9-1-1 system.

(F) Nothing in this section is intended to preclude the commission from exercising authority for situations involving CTUs.

(4) The number of direct dedicated 9-1-1 trunks needed for 9-1-1 purposes shall be determined by the CTU following industry standards to provide a grade of service of P.01 or greater, or its IP or NG9-1-1 equivalent, but the minimum number of direct dedicated 9-1-1 trunks to each E9-1-1 selective router, 9-1-1 tandem, IP-based 9-1-1 system, or NG9-1-1 system per service arrangement shall not be less than two.

(5) As a prerequisite to receiving compensation for more than the minimum number of direct dedicated 9-1-1 trunks required to meet the P.01 grade of service, the CTU must provide to the 9-1-1 administrative entity or entities, at least 30 days prior to seeking additional compensation, copies of traffic studies, performed using measured call volumes on the individual trunk group, establishing that more than the minimum number of direct dedicated 9-1-1 trunks required to meet the P.01 grade of service are necessary.

(6) The traffic study or summary provided in response to paragraph (5) of this subsection shall be provided to the 9-1-1 administrative entity or entities at no cost. Any other traffic studies to evaluate current network performance will be provided to the 9-1-1 administrative entity or entities upon request, and the CTU shall be compensated by the 9-1-1 administrative entity or entities on a time and materials basis at rates that do not exceed the tariff rates approved as reasonable by the commission for the dominant CTU in the rate center.

(7) Only the CTU originating a direct dedicated 9-1-1 trunk can submit charges to the appropriate 9-1-1 administrative entity or entities for the maximum reimbursement required in paragraph (1) of this subsection. A dedicated 9-1-1 trunk must be approved by the appropriate 9-1-1 administrative entity or entities as necessary prior to connecting to an E9-1-1 selective router, 9-1-1 tandem, IP-based 9-1-1 system, or NG9-1-1 system. The appropriate 9-1-1 administrative entity or entities may approve dedicated 9-1-1 trunking arrangements that aggregate the 9-1-1 service of multiple CTUs.

(8) Where the same direct dedicated 9-1-1 trunks are permitted by the relevant service arrangements to serve areas administered by multiple 9-1-1 administrative entities, a CTU shall contact the 9-1-1 administrative entity serving the largest number of access lines for the area served by the CTU with those direct dedicated 9-1-1 trunks and there shall be a rebuttable presumption that the 9-1-1 administrative entity serving the largest number of access lines is the appropriate 9-1-1 administrative entity to receive the billings for these direct dedicated 9-1-1 trunks. The 9-1-1 administrative entity that is responsible for receiving the billings for direct dedicated 9-1-1 trunks pursuant to this subsection, may seek reimbursement of such expense from other 9-1-1 administrative entities within the affected rate center.

(9) The 9-1-1 network services provider shall bill the appropriate 9-1-1 administrative entity and shall not bill a CTU for ANI, ALI, and/or selective routing services. Billing for additional or other 9-1-1 related services specifically required by a CTU is permitted.

(d) **Reimbursement prerequisites.** A CTU must comply with each of the following prerequisites before the CTU can obtain reimbursement from the appropriate 9-1-1 administrative entity for direct dedicated 9-1-1 trunks:

(1) Before the CTU initiates the provision of local exchange service in those areas in which a 9-1-1 administrative entity provides 9-1-1 service, the CTU shall execute a 9-1-1 service agreement with the 9-1-1 administrative entity.

(2) The CTU shall provide verification to each appropriate 9-1-1 administrative entity that it is complying with all requirements of §26.433 of this title (relating to Roles and Responsibilities of 9-1-1 Service Providers) including, but not limited to, §26.433(e)(2) of this title, requiring "a designated contact person to be available at all times to work with the appropriate" 9-1-1 administrative entity."

(3) A CTU that resells its local exchange service to any CTU that, in turn, provides the resold local exchange service to end users, shall demonstrate to the appropriate 9-1-1 administrative entity that the CTU has provided initial notice to its reselling CTUs:

(A) that it does not remit the required 9-1-1 emergency service fees on behalf of reselling CTUs; and

(B) that, subject to a confidentiality agreement with the appropriate 9-1-1 administrative entity, it will release reselling CTUs wholesale billing records to 9-1-1 administrative entities for quality measurement purposes, including, but not limited to, auditing a reselling CTU's collection and remittance of 9-1-1 emergency service fees in accordance with applicable law.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter R. PROVISIONS RELATING TO MUNICIPAL REGULATION AND RIGHTS-OF-WAY MANAGEMENT

§26.461. Access Line Categories.

(a) **Purpose.** This section establishes three competitively neutral, non-discriminatory categories of access lines for statewide use in establishing a uniform method for compensating municipalities for the use of a public right-of-way by certificated telecommunications providers (CTPs).

(b) **Application.** The provisions of this section apply to CTPs, as defined by subsection (c)(2) of this section, and to municipalities in the State of Texas.

(c) **Definitions**. The following words and terms when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise.

(1) **Access lines –**

(A) means a unit of measurement representing

(i) each switched transmission path of the transmission media that is physically within a public right-of-way extended to the end-use customer's premises within the municipality, that allows the delivery of local exchange telephone services within a municipality, and that is provided by means of owned facilities, unbundled network elements or leased facilities, or resale; or

(ii) each termination point or points of a nonswitched telephone or other circuit consisting of transmission media located within a public right-of-way connecting specific locations identified by, and provided to, the end-use customer for delivery of nonswitched telecommunications services within the municipality; or

(iii) each switched transmission path within a public right-of-way used to provide central office-based PBX-type services for systems of any number of stations within the municipality, and in that instance, one path shall be counted for every 10 stations served; or

(iv) any other line not described in clauses (i), (ii) or (iii) of this subparagraph that provides voice service delivered by means of owned facilities, unbundled network elements or leased facilities, or resale.

(B) The definition of "access line" may not be construed to include interoffice transport or other transmission media that do not terminate at an end-use customer's premises or to permit duplicate or multiple assessment of access line rates on the provision of a single service.

(2) **Certificated telecommunications provider (CTP) –** A person who has been issued a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority by the commission to offer local exchange telephone service or a person who provides voice service.

(3) **Public right-of-way –** The area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the municipality has an interest. The term does not include the airways above a right-of-way with regard to wireless telecommunications.

(4) **Residential –** Services provided at residential locations and primarily for residential (non-commercial) use. Definitions in the tariffs or price sheets of the provider, and the determinations made by provider for billing purposes shall control, unless the provider's definitions unreasonably depart from the general definition herein for purposes of avoidance of the payment of appropriate fees to the municipality.

(5) **Non-Residential –** All other locations not served by a residential line.

(6) **Voice service –** Voice communications services provided through wireline facilities located at least in part in the public right-of-way, without regard to the delivery technology, including

Internet protocol technology. The term does not include voice service provided by a commercial mobile service provider as defined by 47 U.S.C. Section 332(d).

(d) **Access line categories**. There shall be three categories of access lines. The three categories shall be as follows:

(1) Category 1 shall include both analog and digital residential switched access lines and any other access line that provides residential voice service. It shall also include point-to-point private lines, whether residential or non-residential, only to the extent such lines provide burglar alarm or other similar security services.

(2) Category 2 shall include all analog and digital non-residential switched access lines and any other access line that provides non-residential voice service.

(3) Category 3 shall include all other point-to-point private lines, whether residential or non-residential, not otherwise included within category 1.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter R. PROVISIONS RELATING TO MUNICIPAL REGULATION AND RIGHTS-OF-WAY MANAGEMENT

§26.463. Calculation and Reporting of a Municipality's Base Amount.

(a) **Purpose.** This section establishes a uniform method for determining a municipality's base amount and calculating the value of in-kind services provided to a municipality under an effective franchise agreement or ordinance by certificated telecommunications providers (CTPs), and sets forth relevant reporting requirements.

(b) **Application.** This section applies to all municipalities in the State of Texas.

(c) **Definitions**. The following words and terms when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise.

(1) **Base amount** – The total amount of revenue received by the municipality from CTPs in franchise, license, permit, application, excavation, inspection, and other fees related to the use of a public right-of-way in calendar year 1998 within the boundaries of the municipality. The base amount may include revenue from newly annexed areas, the value of in-kind services or facilities, or municipal fee rate escalation provisions for certain municipalities as prescribed in subsection (d) of this section.

(A) The base amount does not include pole rental fees, special assessments, and taxes of any kind, including ad valorem or sales and use taxes, or other compensation not related to the use of a public right-of-way.

(B) The base amount does not include compensation received from interexchange carriers, cable providers or wireless providers, who may be CTPs, but whose lines do not meet the definition of access line under §26.461 of this title (relating to Access Line Categories).

(2) **Effective franchise agreement** – A franchise agreement or ordinance that is adopted and effective by its own terms by January 12, 1999, or by mutual agreement of the parties has been held-over after its expiration date, without dispute, and the municipality and the CTP were in the process of developing a new agreement or ordinance.

(3) **In-kind compensation.**

(A) In-kind services – Services received by a municipality from a CTP during calendar year 1998 at either below cost or no cost as part of an effective franchise agreement.

(B) In-kind facilities – Facilities received by a municipality from a CTP before or during calendar year 1998 at either below cost or at no cost as part of an effective franchise agreement.

(4) **Litigating municipality** – A municipality that was involved in litigation relating to franchise fees with one or more CTPs during any part of calendar year 1998.

(5) **Other compensation** – Compensation not related to the use of a public right-of-way paid by a CTP to a municipality, including, but not limited to, fees paid to the municipality to obtain access to municipally-owned poles, ducts, conduits, buildings, and other facilities.

(6) **Similarly sized municipality** –

(A) For municipalities with a population less than 1000, a similarly sized municipality shall be another municipality with a population within 200 more or fewer persons than the reporting municipality's population, located in the same or adjacent county as the reporting municipality.

(B) For municipalities with a population greater than 1000, a similarly sized municipality shall be another municipality with a population within 20% of the reporting municipality's population, located in the same or adjacent county as the reporting municipality.

(C) Municipal population shall be determined using the January 1, 1999 population estimates of the Texas State Data Center.

(D) The reporting municipality and the similarly sized municipality shall have the same CTP with the greatest number of access lines.

(7) **Special assessment** – An assessment authorized for public improvements under the Local Government Code or the Transportation Code.

(d) **Determination of a municipality's base amount.** A municipality's base amount shall be the sum of all applicable revenue received from CTPs, including newly annexed areas, the value of in-kind compensation, and the value of any applicable escalation provisions in effective franchise agreements or ordinances, unless a municipality's base amount is determined under subsection (f) or (g) of this section.

(1) **Revenue received.** Payments received by a municipality from CTPs as compensation for calendar year 1998 usage of the public right-of-way.

(A) Payments received outside of calendar year 1998 may be included as revenue received only to the extent that these payments represent compensation for calendar year 1998 usage of a public right-of-way.

(B) Payments received in calendar year 1998 that do not represent compensation for calendar year 1998 usage of a public right-of-way shall be excluded.

(2) **Escalation provisions.** The municipality shall calculate and report its fee rate escalation amount that is known and measurable for calendar year 1999, that was specifically prescribed in effective agreements or ordinances, and add that escalation amount to the base amount calculation.

(3) **In-kind compensation.** In-kind services or facilities shall be valued at 1.0% of the base amount unless a municipality can establish before the commission that those services or facilities had a greater value in calendar year 1998. Municipalities requesting in-kind compensation above 1.0% of the base amount shall make a request consistent with subsections (e) and (j) of this section.

(e) **Valuation of additional in-kind compensation.** If a municipality wants to establish that the total value of in-kind compensation received from CTPs had a greater value in 1998 than 1.0% of the municipality's base amount, it must make a showing consistent with this subsection and meet the filing requirements of subsection (j) of this section.

(1) **Telecommunications equipment.** The municipality shall compute the 1998 value by dividing the original cost of the equipment by the term in years of the effective franchise agreement.

(2) **Dark fiber.** Where a municipality had the option to use the CTP's dark fiber as in-kind compensation in calendar year 1998, the municipality shall value the fiber only to the extent the municipality utilized it in calendar year 1998. The value shall be computed in accordance with paragraph (4) of this subsection. Where a CTP permanently transferred ownership of the dark fiber to the municipality as in-kind compensation before or during calendar year 1998, the value of the dark fiber shall be computed for its entire length in accordance with paragraph (1) of this subsection.

(3) **Poles, ducts, and conduits.** Where a municipality had the option to use the CTP's poles, ducts, and conduits as part of its in-kind compensation, it shall value those facilities only to the extent the municipality utilized them during calendar year 1998. The value of the poles, ducts and conduits shall be based upon reasonable annual rental fees charged or paid by other utilities for similar facilities. Where a municipality and a CTP have entered into a joint-use agreement for the use of poles, ducts, or conduits, no value shall be included in computing in-kind compensation for such use.

(4) **Telecommunications service.** The municipality shall value the telecommunications service it received as in-kind compensation by determining the fees paid by other municipalities for same or similar services, or through the average price charged in 1998 by three suppliers qualified to provide the service.

(5) **All other facilities and services.** The municipality shall perform a survey of suppliers for all other in-kind facilities and services it received in calendar year 1998, to establish true market values. The municipality shall survey at least three suppliers for each facility or service it is valuing.

(f) **Base amount for eligible municipalities.**

(1) Eligible municipalities include municipalities in counties with a population of less than 25,000 on December 31, 1998, municipalities that did not have an effective franchise agreement or ordinance on January 12, 1999, and municipalities that were not in existence on January 12, 1999. A municipality that was incorporated prior to January 12, 1999 but received no compensation from CTPs for calendar 1998 use of the public right-of-way, shall also be considered an eligible municipality.

(A) If a municipality is located in more than one county, its eligibility shall be determined by the county containing the greatest number of its residents.

(B) County population shall be determined using the Texas State Data Center population estimates for January 1, 1999.

(2) The base amount for an eligible municipality shall, at the election of the governing body of the municipality, be equal to one of the following amounts:

(A) An amount not greater than the statewide average fee per line for each category of access line of the CTP with the greatest number of access lines in that municipality, multiplied by the total number of access lines in each category located within the boundaries of the municipality on December 31, 1998, for a municipality in existence on that date, or on the date of incorporation for a municipality incorporated after that date; or

(B) An amount not greater than the base amount determined for a similarly sized municipality in the same or an adjacent county in which the CTP with the greatest number of access lines in the municipality is the same for each municipality. The similarly sized municipality must have computed its base amount using methods other than this paragraph; or

(C) The total amount of revenue received by the municipality in franchise, license, permit, and application fees from all CTPs in calendar year 1998 consistent with the methodology prescribed under subsection (d)(1) of this section.

(g) **Base amount for litigating municipality.** The base amount for a litigating municipality that not later than December 1, 1999, repeals any ordinance subject to dispute in the litigation, voluntarily dismisses with prejudice any claims in the litigation for compensation, and agrees to waive any potential claim for compensation under any franchise agreement or ordinance expired or in existence on September 1, 1999, is, at the municipality's election, equal to one of the following amounts:

(1) An amount not to exceed the statewide average access line rate on a per category basis for the CTP with the greatest number of access lines in that municipality multiplied by the total number of access lines located within the boundaries of the municipality on December 31, 1998, including any newly annexed areas; or

(2) An amount not to exceed 21% of the total sales and use tax revenue received by the municipality pursuant to Texas Tax Code, Chapter 321. The sales and use tax revenue will be based on the calendar year 1998 report of taxes collected, as issued by the State Comptroller for a municipality. The amount does not include sales and use taxes collected under:

(A) Texas Transportation Code, Chapters 451, 452, 453, or 454 for a mass transit authority;

(B) the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), for a 4A or 4B Development Corporation;

(C) Texas Local Government Code, Chapters 334 and 335; and

(D) Texas Tax Code, Chapters 321, 322, and 323, for a special district, including health service, crime control, hospital, and emergency service districts.

(h) **Books and records.** Subject to request by the commission, a municipality shall provide sufficient records and documentation to substantiate its base amount calculation as prescribed in this chapter. A municipality shall maintain books and records relating to compensation received pursuant to Texas Local Government Code, Chapter 283, in accordance with generally accepted accounting principles (GAAP) and state and federal guidelines, and in a manner that allows for easy identification and reporting of right-of-way fees received from each CTP.

(i) **Reporting procedures and requirements.**

(1) **Who shall file.** The record-keeping and reporting requirements listed in this section shall apply to all municipalities in the State of Texas.

(2) **Reporting.** Unless otherwise specified, periodic reporting shall be consistent with this subsection and subsection (m) of this section.

(A) **Initial reporting.** A municipality shall file its base amount using the commission-approved *Form for Calculating Right-of-way Compensation* (FCRC), or the commission-approved *Program for Calculating Right-of-way Compensation* (PCRC), with the commission no later than December 1, 1999 under Project Number 20935, *Implementation of HB 1777*.

(B) **Subsequent reporting.**

(i) The commission may periodically require each municipality to file with the commission, on an as-needed basis, a report on municipal compensation. The report shall include all amounts received annually pursuant to this section and shall identify quarterly payments from each CTP.

(ii) The commission may request additional documentation if it determines a filing by the municipality is insufficient. If the commission requires additional information, the municipality shall respond and provide the needed documents to the commission within 30 days from the time the municipality receives the request.

(j) **Reporting for additional in-kind compensation.** This subsection applies only to a municipality valuing in-kind compensation at a level greater than 1.0% of its base amount, pursuant to subsection (e) of this section. The municipality maintains the burden of proof for establishing the reasonableness of its valuation. No later than December 1, 1999, the municipality shall file using the commission-approved *Form for Valuing In-kind Compensation Over 1.0%*. If the commission determines that the value of in-kind compensation is less than the value claimed by the municipality, the value of in-kind compensation for that municipality shall, on an interim basis, default to 1.0% of the base amount until the municipality makes a showing consistent with this section and subsection (e) of this section.

(k) **Allocation of Base Amount.** Not later than December 1, 1999, a municipality that wants to propose an allocation of the base amount over specific access line categories shall notify the commission of the desired allocation. The commission shall establish an allocation of the base amount over the categories of access lines if a municipality does not file its proposed allocation by December 1, 1999.

(1) A municipality may request a modification of the commission's allocation not more than once every 24 months by notifying the commission and all affected CTPs in September of that year that the municipality wants to change the allocation for the next calendar year.

(2) A municipality's allocation shall be implemented unless, on complaint by an affected CTP, the commission determines that the allocation is not just and reasonable, is not competitively neutral, or is discriminatory.

(l) **Late, insufficient, or incorrect filing.**

(1) If a municipality fails to complete its base amount report by the date required by this section, the commission shall assume that the base amount for that municipality is $0.

(2) All commission-established rates and all compensation thereunder shall be applied prospectively from the date the CTPs timely implement the appropriate rates.

(3) A CTP shall not take more than 90 days to implement the rates established by the commission.

(m) **Report attestation.** All filings with the commission pursuant to this section shall be in accordance with the commission-approved FCRC or PCRC instructions, as appropriate. The filings shall be attested to by an officer or authorized representative of the municipality under whose direction the report is prepared or other official in responsible charge of the entity in accordance with §26.71(d) of this title (relating to General Procedures, Requirements and Penalties).

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter R. PROVISIONS RELATING TO MUNICIPAL REGULATION AND RIGHTS-OF-WAY MANAGEMENT

§26.465. Methodology for Counting Access Lines and Reporting Requirements for Certificated Telecommunications Providers.

(a) **Purpose**. This section establishes a uniform method for counting access lines within a municipality by category as provided by §26.461 of this title (relating to Access Line Categories), sets forth relevant reporting requirements, and sets forth certain reseller obligations under the Local Government Code, Chapter 283.

(b) **Application**. This section applies to all certificated telecommunications providers (CTPs) in the State of Texas.

(c) **Definitions.** The following words and terms when used in this section, shall have the following meaning, unless the context clearly indicates otherwise.

(1) **Customer** – The retail end-use customer.

(2) **Transmission path** – A path within the transmission media that allows the delivery of switched local exchange service or provides voice service.

(A) Each individual switched service shall constitute a single transmission path.

(B) Where services are offered as part of a bundled group of services, each switched service in that bundled group of services shall constitute a single transmission path.

(C) Services that constitute vertical features of a switched service, *e.g.*, call waiting, caller-ID, do not constitute a transmission path.

(D) Where a service or technology is channelized by the CTP and results in a separate switched path for each channel, each such channel shall constitute a single transmission path.

(E) Voice service provided through wireline facilities located at least in part in the public right-of-way, without regard to the delivery technology, switched or not, and including Internet protocol technology, shall constitute a single transmission path.

(3) **Wireless provider** – A provider of commercial mobile service as defined by §332(d), Communications Act of 1934 (47 U.S.C. §151 *et seq.*), Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993 (Public Law 103-66).

(d) **Methodology for counting access lines.** A CTP's access line count shall be the sum of all lines counted pursuant to paragraphs (1), (2), (3), and (4) of this subsection, and shall be consistent with subsections (e), (f) and (g) of this section.

(1) **Switched transmission paths and services.**

(A) The CTP shall determine the total number of switched transmission paths, and shall take into account the number of switched services provided and the number of channels used where a service or technology is channelized.

(B) All switched services shall be counted in the same manner regardless of the type of transmission media used to provide the service.

(C) If the transmission path crosses more than one municipality, the line shall be counted in, and attributed to, the municipality where the end-use customer is located. Pursuant to Local Government Code §283.056(f), the per-access-line franchise fee paid by CTPs constitutes full compensation to a municipality for all of a CTP's facilities located within a public right-of-way, including interoffice transport and other transmission media that do not terminate at an end-use customer's premises, even though those types of lines are not used in the calculation of the compensation.

(2) **Nonswitched telecommunications services or private lines.**

(A) Each circuit used to provide nonswitched telecommunications services or private lines to an end-use customer, shall be considered to have two termination points, one on each customer location identified by the customer and served by the circuit.

(B) The CTP shall count nonswitched telecommunications services or private lines by totaling the number of terminating points within a municipality.

(C) A nonswitched telecommunications service shall be counted in the same manner regardless of the type of transmission media used to provide that service.

(D) A terminating point shall be counted in, and attributed to, the municipality where that point is located. In the event a CTP is not able to identify the physical location of the terminating point, that point shall be attributed to the municipality identified by the CTP's billing systems.

(E) Where dark (unlit) fiber is provided to an end-use customer who then lights it, the line shall be counted as a private line, by default, unless it is evident that it is used for providing switched services.

(3) **Central office based PBX-type services.** The CTP shall count one access line for every ten stations served.

(4) **Voice service.**

(A) The CTP shall count each end-use customer provided voice service as one access line. Services that constitute vertical features of a voice service, or are bundled with the voice service shall not be counted as a separate access line.

(B) In the event a CTP is unable to identify the physical location of an end-use customer utilizing voice service, but that end-use customer’s billing address, as identified in the CTP’s billing system, is located inside the boundaries of a municipality, the end-use customer’s access line shall be attributed to the municipality where such billing address is located.

(e) **Lines to be counted.** A CTP shall count the following access lines:

(1) all access lines provided to a retail end-use customer;

(2) all access lines provided as a retail service to other CTPs and resellers for their own end-use;

(3) all access lines provided as a retail service to wireless telecommunication providers and interexchange carriers (IXCs) for their own end-use;

(4) all access lines a CTP provides as employee concession lines and other similar types of lines;

(5) all access lines provided as a retail service to a CTP's wireless and IXC affiliates for their own end-use, and all access lines provided as a retail service to any other affiliate for their own end-use;

(6) dark fiber, to the extent it is provided as a service or is resold by a CTP and shall exclude lines sold and resold by non-CTPs;

(7) any other lines meeting the definition of access line as set forth in §26.461 of this title;

(8) Lifeline lines;

(9) all retail pay telephone access lines; and

(10) all lines that provide voice service delivered by means of owned facilities, unbundled network elements or leased facilities, or resale that are not otherwise counted under paragraphs (1)-(9) of this subsection.

(f) **Lines not to be counted.** A CTP shall not count the following lines:

(1) all lines that do not terminate at an end-use customer's premises;

(2) lines used by providers who are not end-use customers such as CTP, wireless provider, or IXC for interoffice transport, or back-haul facilities used to connect such providers' telecommunications equipment;

(3) lines used by a CTP's wireless and IXC affiliates who are not end-use customers, for interoffice transport, or back-haul facilities used to connect such affiliates' telecommunications equipment;

(4) lines used by any other affiliate of a CTP for interoffice transport; and

(5) any other lines that do not meet the definition of access line as set forth in §26.461 of this title.

(g) **Reporting procedures and requirements.**

(1) Who shall file. The record keeping, reporting and filing requirements listed in this section or in §26.467 of this title (relating to Rates, Allocation, Compensation, Adjustments and Reporting) shall apply to all CTPs in the State of Texas.

(2) Initial reporting requirements.

(A) No later than January 24, 2000, a CTP shall file its access line count using the commission-approved *Form for Counting Access Line or Program for Counting Access Lines* with the commission. The CTP shall report the access line count as of December 31, 1998, except as provided in subparagraph (C) of this paragraph.

(B) A CTP shall not include in its initial report any access lines that are resold, leased, or otherwise provided to a CTP, unless it has agreed to a request from another CTP to include resold or leased lines as part of its access line report.

(C) A CTP that cannot file access line count as of December 31, 1998 shall file request for good cause exemption and shall file the most recent access line count available for December, 1999.

(D) A CTP shall not make a distinction between facilities and capacity leased or resold in reporting its access line count.

(h) **Exemption.** Any CTP that does not terminate a franchise agreement or obligation under an existing ordinance shall be exempted from subsequent reporting pursuant to §26.467 of this title unless and until the franchise agreement is terminated or expires on its own terms. Any CTP that fails to provide notice to the commission and the affected municipality by December 1, 1999 that it elects to terminate its franchise agreement or obligation under an existing ordinance, shall be deemed to continue under the terms of the existing ordinance. Upon expiration or termination of the existing franchise agreement or ordinance by its own terms, a CTP is subject to the terms of this section.

(i) **Maintenance and location of records.** A CTP shall maintain all records, books, accounts, or memoranda relating to access lines deployed in a municipality in a manner which allows for easy identification and review by the commission and, as appropriate, by the relevant municipality. The books and records for each access line count shall be maintained for a period of no less than three years.

(j) **Proprietary or confidential information.**

(1) The CTP shall file with the commission the information required by this section regardless of whether this information is confidential. For information that the CTP alleges is confidential and/or proprietary under law, the CTP shall file a complete list of the information that the CTP alleges is confidential. For each document or portion thereof claimed to be confidential, the CTP shall cite the specific provision(s) of the Texas Government Code, Chapter 552, that the CTP relies to assert that the information is exempt from public disclosure. The commission shall treat as confidential the specific information identified by the CTP as confidential until such time as a determination is made by the commission, the Attorney General, or a court of competent jurisdiction that the information is not entitled to confidential treatment.

(2) The commission shall maintain the confidentiality of the information provided by CTPs, in accordance with the Public Utility Regulatory Act (PURA) §52.207.

(3) If the CTP does not claim confidential treatment for a document or portions thereof, then the information will be treated as public information. A claim of confidentiality by a CTP does not

bind the commission to find that any information is proprietary and/or confidential under law, or alter the burden of proof on that issue.

(4) Information provided to municipalities under the Local Government Code, Chapter 283, shall be governed by existing confidentiality procedures which have been established by the commission in compliance with PURA §52.207.

(5) The commission shall notify a CTP that claims its filing as confidential of any request for such information.

(k) **Report attestation.** All filings with the commission pursuant to this section shall be in accordance with §22.71 of this title (relating to Filing of Pleadings, Documents and Other Materials) and §22.72 of this title (relating to Formal Requisites of Pleadings and Documents to Be Filed With the Commission). The filings shall be attested to by an officer or authorized representative of the CTP under whose direction the report is prepared or other official in responsible charge of the entity in accordance with §26.71(d) of this title (relating to General Procedures, Requirements and Penalties). The filings shall include a certified statement from an authorized officer or duly authorized representative of the CTP stating that the information contained in the report is true and correct to the best of the officer's or representative's knowledge and belief after inquiry.

(l) **Reporting of access lines that have been provided by means of resold services or unbundled facilities to another CTP.** This subsection applies only to a CTP reporting access lines under §26.467 of this title, that are provided by means of resold services or unbundled facilities to another CTP who is not an end-use customer. Nothing in this subsection shall prevent a CTP reporting another CTP's access line count from charging an appropriate, tariffed administrative fee for such service.

(m) **Commission review of the definition of access line.**

(1) Pursuant to the Local Government Code §283.003, not later than September 1, 2002, the commission shall determine whether changes in technology, facilities, or competitive or market conditions justify a modification of the adoption of the definition of “access line” provided by §26.461 of this title. The commission may not begin a review authorized by this subsection before March 1, 2002.

(2) As part of the proceeding described by paragraph (1) of this subsection, and as necessary after that proceeding, the commission by rule may modify the definition of “access line” as necessary to ensure competitive neutrality and nondiscriminatory application and to maintain consistent levels of compensation, as annually increased by growth in access lines and consumer price index, as applicable, to the municipalities.

(3) After September 1, 2002, the commission, on its own motion, shall make the determination required by this subsection at least once every three years.

§26.467. Rates, Allocation, Compensation, Adjustments and Reporting.

(a) **Purpose**. This section establishes the following:
- (1) rates for categories of access lines;
- (2) default allocation for municipalities;
- (3) adjustments to the base amount and allocation;
- (4) municipal compensation; and
- (5) associated reporting requirements.

(b) **Application.** The provisions of this section apply to certificated telecommunication providers (CTPs) and municipalities in the State of Texas, unless specified otherwise in this section.

(c) **Rate determination**. The sum of the amounts derived from multiplying the rate for each category of access line by the total number of access lines in that category in a municipality shall be equal to the base amount. The rate for each of the access line categories established pursuant to §26.461 of this title (relating to Access Line Categories) shall be calculated using a 1998 access line count in general accordance with the following formula:

B =	Total base amount for 1998.
A1 =	Allocation by percentage to Category 1 access lines.
A2 =	Allocation by percentage to Category 2 access lines.
A3 =	Allocation by percentage to Category 3 access lines.
L1 =	Number of access lines in Category 1.
L2 =	Number of access lines in Category 2.
L3 =	Number of access lines in Category 3.
R1 =	Fee per access line rate for Category 1.
R2 =	Fee per access line rate for Category 2.
R3 =	Fee per access line rate for Category 3.
R1 =	(A1*B)/L1
R2 =	(A2*B)/L2
R3 =	(A3*B)/L3
B =	(L1*R1) + (L2*R2) + (L3*R3)

(d) **Estimating a 1998 access line count**. If a CTP does not provide an actual 1998 access line count, the commission shall use the CTP's 1999 access line count, reported pursuant to §26.465 of this title (relating to Methodology for Counting Access Lines and Reporting Requirements for Certificated Telecommunications Providers), to derive an estimated 1998 access line count.

(1) **Estimating access line count for category 1 (residential) access lines**. The estimated statewide growth rate for category 1 access lines in 1999 is 4.5%. This percentage is determined using the statewide growth rate for residential access lines as reported to the Texas Legislature in the 1997 and 1999 reports entitled "Scope of Competition in Telecommunications Markets." The commission shall estimate a municipality's 1998 access line count for category 1 by discounting 4.5% from the 1999 line count for category 1 lines reported by a CTP.

(2) **Estimating access line count for category 2 (non-residential) and category 3 (point-to-point) access lines**. The estimated statewide growth rate for category 2 and category 3 access lines in 1999 is 7.0%. This percentage is determined using the statewide growth rate for business access lines as reported to the Texas Legislature in the 1997 and 1999 reports entitled "Scope of Competition in Telecommunications Markets." The commission shall estimate a municipality's

1998 access line count for category 2 and category 3 by discounting 7.0% from the 1999 line count for category 2 and category 3 lines reported by a CTP.

(3) **Municipal request for exception.**

(A) No later than March 15, 2000, a municipality may request the use of a municipality-specific growth rate(s), by category, for estimating its 1998 access line count, instead of using the estimated statewide growth rates determined under paragraphs (1) and (2) of this subsection. The municipality's request shall include its proposed growth rates(s), along with proof and methodology for deriving the growth rate(s), from public and verifiable sources.

(B) No later than March 15, 2000, a municipality that requests to use a municipality-specific growth rate(s) shall provide a copy of its filing to all CTPs that have filed access line counts for the municipality.

(C) No later than March 31, 2000, any CTP that has filed access line counts for that municipality may file objections to the municipality's proposed growth rate(s), if any. In order to be considered, an objection must include actual 1998 line count data for that municipality.

(D) Until resolution of the request approval process, the estimated statewide growth rate(s) determined under paragraphs (1) and (2) of this subsection shall be used to determine the municipality's 1998 access line count. Upon resolution of any objections to the request approval process, the commission shall develop a new access line count for 1998 incorporating the new growth rate(s), by category, as appropriate.

(e) **Default allocation**. The commission's default allocation shall be a ratio of 1:2.3:3.5 for access line categories 1, 2, and 3 respectively. This default allocation represents an average of all allocation ratios filed by municipalities with the commission pursuant to §26.463 of this title (relating to Calculation and Reporting of a Municipality's Base Amount).

(1) The commission shall establish access line rates for municipalities using the default allocation unless a municipality has filed its own allocation pursuant to §26.463 of this title.

(2) The access line rates established by the commission for municipalities using the default allocation shall remain in effect until a municipality updates its initial allocation pursuant to subsection (g) of this section or revises its allocation pursuant to subsection (h) of this section.

(f) **Initial rates.** No later than March 1, 2000, the commission shall establish rates for each category of access line in a municipality. These rates shall be considered to be initial rates. The initial rates shall be implemented no later than 90 days from the date the commission establishes the rates. These initial rates shall remain in effect until the rates are updated pursuant to subsection (g) of this section or revised pursuant to subsection (h) of this section.

(g) **Updated rates**. No later than April 14, 2000, the commission shall establish updated rates for each category of access line in a requesting municipality. The initial rates established under subsection (f) of this section shall be updated to incorporate municipal filings pursuant to paragraph (1) of this subsection and/or CTP filings pursuant to paragraph (2) of this subsection, as appropriate. Subject to approval by the commission, the updated municipal and CTP information shall be used to establish updated access line rates. The updated rates shall be in effect until revised pursuant to subsection (h) of this subsection.

(1) **Updates to municipal base amount filings.** No later than March 31, 2000, a municipality may update its base amount and allocation filed with the commission pursuant to §26.463 of this title. No later than March 31, 2000, a municipality that filed a request to update its base amount and/or allocation shall forward a copy of its filing to all CTPs who have filed access line counts for the municipality.

(A) Updates to base amount. A municipal filing for updates to base amount shall use a methodology for calculating the base amount that is consistent with §26.463 of this title, and shall include appropriate justification for the update. Appropriate justification may include:

(i) receipt of late payments from CTPs attributable to 1998 usage of rights-of-way;

(ii) reduction to judgment of disputed payments attributable to 1998 usage of rights-of-way;

(iii) settlement of disputed payments attributable to 1998 usage of rights-of-way;

(iv) eligibility under effective agreements or ordinances to receive a known and measurable amount due to specifically prescribed fee rate escalations provisions for the period between January 1, 2000 and March 1, 2000; and

(v) an inadvertent base amount computational error.

(B) Updates to allocation. A municipality that has filed with the commission its own allocation pursuant to §26.463 of this title may file an updated allocation no later than March 31, 2000.

(2) **Updates to CTP access line counts**. No later than March 15, 2000, a CTP may request to update its access line count filed with the commission pursuant to §26.465 of this title. A CTP's request for updates to access line count shall use a methodology for counting access lines that is consistent with §26.465 of this title, and shall include appropriate justification for the update. Appropriate justification may include, but is not limited to:

(A) an inadvertent access line count computational error;

(B) reconciliation of reported retail and resold access line lines; and

(C) access line counting issues associated with merger, sale, or transfer of CTPs.

(3) **Choosing lower than maximum rate(s).** The rates obtained by applying the allocation to the base amount and dividing the amounts allocated to each category by the appropriate number of access lines in that category in a municipality shall be considered to be maximum rates for a municipality. No later than March 31, 2000, a municipality that wishes to choose lower access line rate(s) than the maximum initial rates established under subsection (f) of this section, shall notify the commission and all CTPs that filed access line counts for that municipality of the lower access line rate(s) it chooses. If a municipality's request to choose lower initial rate(s) is higher than its updated rates, the updated rates shall remain in effect until revised pursuant to subsection (h) of this section.

(h) **Revised rates**. No later than October 15 of each calendar year, upon request from a municipality pursuant to paragraphs (l) and (2) of this subsection, the commission shall establish revised access line rates for each category of access line in a municipality, as applicable. A CTP shall apply the revised rates to access lines in a municipality in January of the next calendar year and compensate a municipality pursuant to the revised rates.

(1) **Adjustments within established rates.** No later than September 1 of each calendar year, a municipality may change its rates within the maximum rates by notifying the commission and all CTPs in that municipality that its wishes to revise its access line rate for the next calendar year. In its notification to the commission and the CTPs, the municipality shall indicate the rates that it wishes to have the commission apply in the next calendar year. Upon such notification, the commission shall revise the rates accordingly.

(2) **Revising allocation formula.** No later than September 1 of each calendar year, and not more than once every 24 months, a municipality may petition a modification of the default allocation or its own allocation by notifying the commission and all affected CTPs in the municipality. In its notification to the commission and the CTPs, the municipality shall designate the allocation that it wishes to have the commission apply in the next calendar year.

(i) **Resolution of municipal allocations.**

(1) The commission shall implement a municipality's allocation unless, the commission determines that the allocation is not just and reasonable, is not competitively neutral, or is discriminatory.

(2) No later than March 15, 2000 any affected CTP may complain regarding a municipality's initial allocation filed pursuant to §26.463 of this title. No later than April 7, 2000 any affected CTP may complain regarding a municipality's updated allocation filed pursuant to subsection (g)(1)(B) of this section. No later than September 15 of any calendar year any affected CTP may complain regarding a municipality's revised allocation filed pursuant to subsection (h)(2) of this section.

(3) Where the market price of a telecommunications service is less than or equal to the amount derived from multiplying the access line rates with the number of access lines used to provide that service, the allocation used to develop the access line rate shall be presumed to be discriminatory, not just and reasonable and not competitively neutral.

(j) **Consumer price index (CPI) adjustment to commission-established rates**. Beginning 24 months after the commission establishes access line rates, the commission shall annually adjust the rates per access line by category for each municipality by an amount equal to one-half the annual change, if any, in the most recent consumer price index (CPI), as determined by the Federal Bureau of Labor Statistics.

(k) **CTP implementation of commission-established rates.** The requirements listed in this subsection shall apply to all CTPs in the State of Texas, except those exempted pursuant to §26.465 of this title.

(1) **Interim compensation.** CTPs shall continue to compensate municipalities at the rates required under the terms of the expired or terminated agreements or ordinances until the CTP implements the commission-established rates. A CTP not subject to an existing franchise agreement or ordinance that wants to construct facilities to offer telecommunications services in the municipality shall pay fees that are competitively neutral and non-discriminatory, consistent with the charges of the most recent agreement or ordinance between the municipality and the CTP serving the largest number of access lines within the municipality until the right-of-way fees established by the commission take effect.

(2) **Billing systems.** A CTP shall develop and maintain billing systems as necessary to implement access line rates, by category, as established by the commission. These systems must be sufficient to substantiate compliance with the access line reporting requirements in this section.

(3) **Quarterly compensation and reporting.** All CTPs are responsible for reporting to the commission their own quarterly access line count report and compensating each municipality, absent a reporting arrangement as described in subsection (l) of this section. All CTPs shall implement commission-established rates for each quarter. Unless otherwise specified, periodic reporting shall be consistent with this subsection and §26.465 of this title.

(A) **Quarterly access line count report.**

(i) No later than 45 days from the end of the preceding calendar quarter, a CTP shall file a quarterly access line count report for the preceding calendar quarter with the commission.

(ii) The quarterly access line count report shall include a count of the number of access lines, by category, by municipality, for the end of each month of the preceding quarter.

(iii) If a CTP deducts or includes a direct write-off pursuant to subsection (m)(2) of this section, the CTP shall complete a reconciliation report, showing a monthly delineation of the amount added to the total payment due to previously uncollectible direct write-offs, and the amount deducted from the total payment

due to direct write-offs. This report shall be part of the quarterly access line count report filing.

(iv) The report shall exclude lines that are resold, leased or otherwise provided to other CTPs unless the CTP is reporting on behalf of another CTP pursuant to subsection (l) of this section.

(v) The CTP contact person listed in the Municipal Access Line Reporting System (MARS) at the time that the quarterly access line counts are entered for each quarter shall be the duly authorized representative of the CTP who certifies that the information contained in the report is based upon personal knowledge and is true and correct.

(vi) The CTP shall respond to any request for additional information from the commission within 30 days from receipt of the request.

(vii) Reports required under this subsection may be used by the commission only to verify the number of access lines that serve customer premises within a municipality.

(viii) On request and subject to the confidentiality protections of the Local Government Code, §283.005, each CTP shall provide each affected municipality with a copy of the report required by this subsection.

(B) **Compensation.**

(i) All CTPs shall apply the most recent commission-established rates to access lines in a municipality.

(ii) The municipal compensation shall be an amount equal to the rate per category of access line multiplied by the number of access lines in that category in that municipality at the end of each month in a calendar quarter as reflected in reports filed pursuant to subparagraph (A) of this paragraph.

(iii) All payments for calendar quarters shall be made no later than 45 days from the end of that quarter.

(4) **Adequate proof of reporting and compensation responsibilities**.

(A) Definition of "underlying CTP" and "reselling CTP."

(i) An underlying CTP is a CTP that owns facilities or provides facilities or capacity to another CTP in the rights-of-way of municipalities.

(ii) A reselling CTP is a CTP to whom an underlying CTP resold, leased or otherwise provided access lines that extend to the end-use customer's premises.

(B) For the purposes of this paragraph, "adequate proof" shall consist of a written agreement that specifically cites, and assigns responsibility for compliance with, the Texas Local Government Code, Chapter 283, and the reporting and compensation requirements of this subchapter.

(C) To ensure that each CTP reports and compensates municipalities for those lines that it uses to serve end-use customers, underlying CTPs and their reselling CTPs shall, as part of their business relationship, enter into an agreement that meets the adequate proof standard of this paragraph.

(D) An underlying CTP shall obtain adequate proof that the reselling CTP will directly report its lines and remit the related payments to municipalities.

(E) A reselling CTP must provide adequate proof to the underlying CTP upon request.

(F) The underlying CTP must acquire this adequate proof within 90 days of the effective date of this section, at the time of the signing of an initial interconnection agreement, or at the time of signing its agreement for the provision of services if the parties do not have an interconnection agreement

(G) If the underlying CTP fails to obtain adequate proof that the reselling CTP will include the access line in its monthly count and remit payment on those access lines to the municipality, the underlying CTP must include such lines in its monthly count of access lines and remit a right-of-way fee to the municipality.

(H) A CTP, whether an underlying CTP or reselling CTP, shall make its adequate proof agreements available for review by municipalities and the commission upon request.

(l) **Alternate reporting and compensation arrangements.** Notwithstanding any other subsection, a CTP shall be subject to the following terms when making alternate reporting and compensation arrangements.

(1) For the purposes of this subsection, "underlying CTP" and "reselling CTP" shall have the same meanings as assigned in subsection (k) of this section.

(2) **Designated reporting party.** A CTP may reach a written agreement separate from any other agreement, including the adequate proof agreement, to have a designated reporting party fulfill the reporting and compensation requirements of this section on its behalf. If the CTP is a reselling CTP, the designated reporting party may be the underlying CTP.

(A) If such an agreement is reached, the designated reporting party shall file the quarterly access line count report in each municipality, by category, on behalf of the CTP, and also compensate the municipality for those lines.

(B) The designated reporting party shall file the quarterly access line count report for each municipality, by category, with the commission on a disaggregated basis by CTP.

(C) Nothing in this subsection shall prevent a designated reporting party from charging a reasonable administrative fee for reporting and compensating a municipality on behalf of a CTP.

(D) Nothing in this subsection shifts the liability from a CTP, reselling or otherwise, for non-payment of municipal compensation and failure to report pursuant to this section.

(3) **Affiliates.** A CTP may file access line reports and remit payments for itself and its affiliates that are CTPs on an aggregated basis. If the CTP does so, the CTP shall include a list of the affiliates and their certification numbers in its quarterly access line count report.

(m) **Pass-through**. A CTP recovering its municipal compensation from its customers within the boundaries of a municipality shall not recover a total amount greater than the sum of the amounts derived from the multiplication of access line rates by the number of lines, per category, for that municipality. Pass-through of the commission's rates established under this chapter shall be considered to be a pro rata charge to customers.

(1) Where a CTP chooses to pass through the municipal fee to its customers such CTP shall not pass through any costs associated with its administration of municipal fees. The pass-through amount shall not exceed the access line rate, by category, established by the commission for that municipality.

(2) A CTP shall be allowed to deduct from its current payment any amounts that are direct write-offs as a result of its collection efforts. Any amounts subsequently recovered from the customer after the direct write-offs shall be included in the amounts payable to each affected municipality in the month(s) received. There shall be no reduction in payment for any estimated uncollectible allowances reported for financial purposes by the CTP.

(3) Beginning January 1, 2001, on request from the commission, a CTP shall report the amounts collected in municipal fees from customers and the municipal fees paid to municipalities for a period determined by the commission. This report shall be filed with the commission by the CTP no later than 60 days from the date the CTP receives this request.

(n) **Compensation from customers of lifeline or other low-income assistance programs**. A municipality may choose to forgo municipal compensation from access lines serving Lifeline customers or customers of other similar low-income assistance programs. A municipality electing this option shall notify all CTPs in the municipality of this decision before September 1 on any given year. Upon receipt of such notification, CTPs shall exclude such end-use customers from their quarterly access line count, not pass through a municipal fee to such end-use customers for the next calendar year, and shall be relieved of any obligation to pay fees on such access lines to the municipality.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter R. PROVISIONS RELATING TO MUNICIPAL REGULATION AND RIGHTS-OF-WAY MANAGEMENT

§26.468. Procedures for Standardized Access Line Reports and Enforcement Relating to Quarterly Reporting.

(a) **Purpose.** This section standardizes access line reports and implements enforcement procedures relating to quarterly reporting.

(b) **Application.** The section applies to all certificated telecommunications providers (CTPs) operating in municipalities in the State of Texas.

(c) **Definition.** The following words and terms, when used in this section, shall have the following meaning unless the context clearly indicates otherwise:

(1) **Certificated telecommunications provider (CTP)** — As defined under Local Government Code §283.002.

(2) **Municipal Access Line Reporting System** (**MARS)** — An Internet Web application designed for the reporting of quarterly access line counts.

(3) **Exemption** — As defined in §26.465(h) of this title (relating to Methodology for Counting Access Lines and Reporting Requirements for Certificated Telecommunications Providers).

(A) **Fully exempt CTP** — A CTP claiming exemption that has no access lines to report for any municipalities participating in the fee-per-access line compensation scheme, as required under §26.467 of this title (relating to Rates, Allocation, Compensation, Adjustments and Reporting).

(B) **Partially exempt CTP** — A CTP claiming exemption that is also operating in and has access lines to report for other municipalities participating under the fee-per-access-line compensation scheme, as required under §26.467 of this title.

(d) **Reporting procedures.** All CTPs shall file the Quarterly Access Line Reports as required under §26.467 of this title electronically using the MARS, unless the CTP is fully exempt as defined in subsection (c)(3)(A) of this section.

(1) **CTPs with municipal access lines**. CTPs shall file all access lines by municipality pursuant to §26.467(k)(3) of this title.

(2) **CTPs with no municipal access lines.** CTPs with no access lines in the State of Texas shall file "Zero Access Lines in Texas."

(e) **Exemption.**

(1) **All exempt CTPs.** Both fully and partially exempt CTPs shall:

(A) by August 15, 2002, file a notarized document listing the municipalities in which it is operating under existing municipal franchise agreements; and

(B) if the notarized list in subparagraph (A) of this paragraph should change, file an updated notarized list no later than the 45 days from the end of the preceding calendar quarter.

(2) **All fully exempt CTPs.** All fully exempt CTPs shall:

(A) by August 15, 2002, use the MARS to claim the exemption;

(B) subsequently, no later than 45 days from the end of the preceding calendar quarter, use the MARS to renew this exemption; and

(C) discontinue renewing this exemption if the CTP should become a partially exempt CTP.

(f) **Failure to comply.** Failure to comply with subsection (d) of this section is subject to administrative penalties pursuant to §22.246 of this title (relating to Administrative Penalties). Instances of noncompliance include, but are not limited to:

(1) failure to report;

(2) untimely reporting; and

(3) inaccurate reporting.

(g) **Factors to consider in imposing penalties.** Failures to comply, as delineated in subsection (f) of this section, are subject to administrative penalties, procedures, and factors set forth in §22.246 of this title. In assessing the administrative penalties, the commission shall take into consideration additional factors which include, but are not limited to:

(1) impact of inaccurate or delayed reporting on municipalities;
(2) the number of days the report was filed late; and
(3) history of previous violations.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter R. PROVISIONS RELATING TO MUNICIPAL REGULATION AND RIGHTS-OF-WAY MANAGEMENT.

§26.469. Municipal Authorized Review of a Certificated Telecommunication Provider's Business Records.

(a) **Purpose.** This section establishes uniform guidelines for a municipal authorized review of a certificated telecommunications provider's (CTP) access line reports, pursuant to Texas Local Government Code §283.056(c)(3).

(b) **Application.** This section applies to all municipalities and CTPs in the State of Texas except to the extent exempt under §26.468(c) of this title (relating to Procedures for Standardized Access Line Reports and Enforcement Relating to Quarterly Reporting).

(c) **Municipal Authorized Review Procedural Guidelines.**

(1) Municipalities are encouraged to informally ask questions about access line counts or municipal fee payments with the appropriate CTP in a timely manner. CTPs are encouraged to provide reasonable answers to access line count and municipal fee payment questions of the municipalities in a timely manner.

(2) Not later than 90 days after the filing of a CTP's quarterly report of access lines, as required by §26.468 of this title, a municipality shall notify a CTP of its intent to conduct an authorized review of the CTP's business records to ensure compliance with access line reporting requirements. This notification shall be in writing and sent via certified mail to the CTP contact person named on the commission's Municipal Access Line Reporting System (MARS) website and shall include a summary of the municipality's concern(s) and/or reason(s) for the review. Such notice may be modified and amended in a subsequent written notice using the same process.

(3) Not later than 21 days from the CTP's receipt of notice under paragraph (2) of this subsection, the CTP shall provide to the requesting municipality a written list of the types of business records that are necessary to conduct an authorized review as requested in the notice, with brief descriptions for identification purposes.

(4) The municipality shall determine which business records from the list provided by the CTP will be subject to review and provide written notice to the CTP. The CTP shall provide the requested business records within 30 days from the municipality's written request. The CTP shall provide the business records to the municipality in the following manner:

(A) The CTP shall provide access to the requested business records on its premises.

(B) The on-premises review shall be conducted at the principal Texas office of the CTP, unless otherwise agreed by the CTP and the municipality.

(C) Business records shall remain the property of the CTP and may not be removed or reproduced without the express written permission of the CTP.

(D) Business records may be produced in a compatible electronic format or paper copy at the discretion of the CTP.

(5) A CTP may redact customer-specific proprietary information as necessary for compliance with federal or state law. Information deemed confidential or proprietary by the CTP must be so noted, and each participating party and its representative(s) shall protect such confidential or proprietary information as provided in Texas Local Government Code §283.005. CTPs may require all persons participating in the authorized review to execute a non-disclosure agreement prior to providing access to documents or other information.

(d) **Commission Resolution of Disputed Issues.**

(1) **Informal dispute resolution**. If cooperative efforts between the parties have failed to resolve all issues related to the authorized review, the commission staff may mediate any dispute(s) filed by the CTP or the municipality.

(2) **Formal complaint to the commission**. A formal complaint may be filed with the commission by either a CTP or Municipality to resolve remaining disputed issues not settled by informal dispute

resolution pursuant to paragraph (1) of this subsection. The commission shall provide notice of the filing of a formal complaint to all municipalities and all CTPs in accordance with established commission procedural rules.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter R. PROVISIONS RELATING TO MUNICIPAL REGULATION AND RIGHTS-OF-WAY MANAGEMENT.