

DOCKET NO. 24151

APPLICATION OF LEACO RURAL §
TELEPHONE COOPERATIVE, INC. §
FOR WAIVER OF REPORTING §
REQUIREMENTS IMPOSED BY P.U.C. §
SUBST. R. 26.465(g)(2)(B) §

PUBLIC UTILITY COMMISSION
OF TEXAS

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ORDER NO. 2
NOTICE OF DENIAL OF WAIVER REQUEST

On May 23, 2001, Leaco Rural Telephone Cooperative, Inc. (Leaco or the Applicant), filed a request for waiver of the reporting requirements imposed by P.U.C. SUBST. R. 26.465(g)(2)(B) regarding access line counting. Subsection (g)(2)(B) requires all certificated telecommunications providers (CTP) to file with the Commission quarterly reports showing the number of access lines within each municipality served by the provider.

On May 25 2001, the Commission issued Order No. 1 requesting comment and proposed procedural schedule. The Commission published notice in the *Texas Register* on June 8, 2001. No protests or motions to intervene have been filed in this proceeding.

On June 18, 2001, the Commission Staff (Staff) filed a recommendation for denial of Leaco's request for waiver. Staff noted that P.U.C. SUBST. R. 26.465(g) and 26.467(k)¹ are derived from the Texas Local Government Code, which reads in part:

On a quarterly basis, each certificated telecommunications provider shall file a report with the commission that shows the number of access lines, including access lines by category, that the provider has within each municipality at the end of each month of the quarter. The provider shall include with the report a certified statement from an authorized officer or duly authorized representative of the provider 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. On request and subject to the confidentiality protections of Section 283.005, each certificated telecommunications provider shall provide each affected municipality with a copy of the report required by this subsection.²

¹ As Staff points out, implicit in Leaco's application is a request for waiver of the reporting requirements of P.U.C. SUBST. R. 26.467(k)(3)(A), which govern municipality compensation and re-asserts the access line reporting requirements.

² TEX. LOC. GOV'T CODE ANN. § 283.055 (Vernon 2000 and Supp. 2001).

Under the Local Government Code, Staff noted, the only exceptions to the reporting requirement are when the CTP has either a pre-existing franchise agreement that is still in effect (§ 283.054(a)) or an intercarrier agreement in which another CTP files the report for them (§ 283.055(k)). These two exceptions are mirrored in P.U.C. SUBST. R. 26.465(h) and 26.467(k)(4), respectively. Staff asserted that since these two exceptions do not apply to Leaco, there is no authority for the Commission to grant a waiver outside of these exemptions.

Staff further recommended that it is not in the public interest to grant the requested relief for the following reasons: (1) all non-exempt CTPs are required to submit a quarterly report; (2) online reporting makes the burden of reporting minimal; (3) the information is used by the Commission in meeting state-approved performance measures reporting; (4) quarterly contact is maintained between Staff and the CTPs; and (5) if a waiver is granted, other zero-reporting CTPs would soon follow, diminishing the value of the reports.

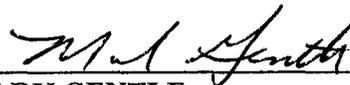
On June 21, 2001, the Applicant filed a response to Staff's recommendation. The Applicant disagrees with Staff's interpretation of the Texas Local Government Code. Leaco asserts that since it does not provide service within any municipality in the state of Texas, the premise upon which reporting is required does not apply, and thus the waiver request. Applicant further takes exception to Staff's assertion that the waiver requested by Applicant in this proceeding is not in the public interest and that other "zero-reporting" CTPs would follow Applicant's lead. First, responded Applicant, a statutory reporting requirement related to municipal regulation and right-of-way management is only appropriate where municipalities exist. Second, Applicant interprets a "zero-reporting" CTP as one with municipalities but it does not yet provide service at this time, therefore, reporting zero lines to the Commission. Applicant asserts that it is not presenting itself as a zero-reporting provider. According to Applicant, the distinction being that it provides service to only 15 access lines in West Texas within a service area in which no municipalities exist and none are expected to develop.

The Administrative Law Judge (ALJ) has reviewed the parties positions and is in agreement with Staff's recommendation for denial of Applicant's request for waiver of P.U.C. SUBST. R. 26.465(g)(2)(B). Therefore, in accordance with Staff's recommendation, Leaco's request for waiver of P.U.C. SUBST. R. 26.465(g)(2)(B) is DENIED.

Administrative denial of this uncontested application has no precedential value in a future proceeding.

SIGNED AT AUSTIN, TEXAS the 5th day of July 2001.

PUBLIC UTILITY COMMISSION OF TEXAS



MARK GENTLE
ADMINISTRATIVE LAW JUDGE
POLICY DEVELOPMENT DIVISION