

**PROJECT NO. 24640**

<b>ISSUES RELATED TO</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>ESTABLISHMENT OF AND ANNUAL</b>	<b>§</b>	
<b>REVISION TO ACCESS LINE RATES</b>	<b>§</b>	<b>OF TEXAS</b>
<b>FOR TEXAS MUNICIPALITIES</b>	<b>§</b>	

**ORDER**

This Order establishes the fee-per-access-line rates for the City of East Bernard (City), and is necessary because the City is newly incorporated and therefore did not initially participate in the process of establishing fee-per-access-line rates under TEX. LOC. GOV'T CODE Chapter 283, but now elects to set such rates. However, in order to be consistent with the intent of Chapter 283 of the Local Government Code, including but not limited to TEX. LOC. GOV'T CODE §§ 283.053 and 283.055, the fee-per-access-line rates are hereby calculated to reflect annual Consumer Price Index (CPI) adjustments approved by the Commission since 2002. Accordingly, fee per access line rates for the City are shown in Exhibit A, attached hereto. These rates shall be applied prospectively from the date of this Order. Finally, this Order does not authorize surcharges for recovery of any compensation for right-of-way usage prior to implementation of these rates.

**I. Introduction**

On December 29, 2004, City filed its petition for the Commission to establish its maximum fee per access line rate. Pursuant to TEX. LOC. GOV'T CODE § 283.055(b),<sup>1</sup> the Public Utility Commission of Texas (Commission) is required to establish: (1) rates per access line by category for each municipality; and (2) the statewide average of those rates per access line by category for each certificated telecommunications provider (CTP). Both of these requirements were met when the Commission adopted municipal rates and CTP statewide averages.<sup>2</sup>

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<sup>1</sup> All references hereinafter to statutory sections and chapters relate to the TLGC Ann. §§ 283.001-283.058 (Vernon Supp. 1998) Added by Acts 1999, 76<sup>th</sup> Leg. Chapter 840, § 1, Eff. Sept. 1, 1999, unless otherwise stated (LGC).

<sup>2</sup> *Implementation of House Bill 1777*, Docket No. 20935, Order (May 3, 2000).

However, due to either nonparticipation or subsequent incorporation by certain municipalities, the Commission did not set rates for all existing Texas municipalities in May 2000. This Order establishes the fee-per-access-line rates for one newly incorporated municipality: the City of East Bernard. This municipality is newly incorporated and as such, has chosen to participate in the framework established in Chapter 283 for compensation of public right-of-way usage. GTE Southwest, Inc. d/b/a Verizon Southwest (Verizon) is the Incumbent Local Exchange Carrier (ILEC) serving the City and provided access line counts for the City for 2005, which the Commission used in conjunction with Verizon's statewide average rates to create a city-specific base amount.<sup>3</sup> The City elected to use the Commission-established default allocation, pursuant to Chapter 283 and P.U.C. SUBST. R. 26.467 regarding *Rates, Allocation, Compensation, Adjustments and Reporting*. This municipality has elected to use the city-maximum rates as its city-preferred rates. These rates are reflected in Exhibit A.

## II. Findings of Fact

1. The purpose of Chapter 283 is to establish a uniform method for compensating municipalities for the use of a public right-of-way by CTPs that: (a) is administratively simple for municipalities and telecommunications providers; (b) is consistent with state and federal law; (c) is competitively neutral; (d) is nondiscriminatory; (e) is consistent with the burdens on municipalities created by the incursion of certificated telecommunications providers into a public right-of-way; and (f) provides fair and reasonable compensation for the use of a public right-of-way.
2. Section 283.051(a) provides that a CTP providing telecommunications services within a municipality is required to pay as composition to a municipality for use of the public rights-of-way in the municipality only the amount determined by the Commission under § 283.055 of the LGC.

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<sup>3</sup> The statewide access line rate, when multiplied by the CPI and again multiplied by 2005 access line counts produces a CPI-adjusted city specific rate.

3. Section 283.051(c) provides that fees imposed under Chapter 283 constitute “a municipal fee” or “municipal fees” within the meaning of PURA<sup>4</sup> §§ 51.009 and 54.206.
4. Section 283.053(b) provides that the base amount for a municipality is the total amount of revenue received by the municipality in franchise, license, permit, and application fees and in-kind services or facilities from CTPs in 1998 within the boundaries of the municipality.
5. Section 283.055(b) requires the Commission to establish (a) for each municipality, rates per access line by category; and (b) the statewide average of those rates per access line by category. Consistent with § 283.055(c), when applied to the total number of access lines by category in the municipality, the Commission’s rates shall be equal to the base amount.
6. Section 283.055(d) requires that a municipality that wants to effect an allocation of the base amount over specific access line categories to be assessed rates must notify the Commission of the desired allocation. Participating municipalities included their requested allocation as part of the original base amount filings. Pursuant to § 283.055(d), the Commission developed a default allocation of 1:2.3:3.5 that is reflected in P.U.C. SUBST. R. 26.467(e). This default allocation represents an average of all allocation ratios filed by participating municipalities.
7. Section 283.055(d) states that 24 months after the Commission establishes rates per access line, the Commission shall annually adjust the rates per access line for each municipality by an amount equal to one-half the annual change, if any, in the CPI.
8. The Commission has, by order, approved CPI adjustments since 2002. The CPI adjustment for 2002 was 1.15%. For 2003, the Commission approved CPI adjustment was 0.64%. The Commission approved a CPI adjustment of 1.154% for 2004. On

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<sup>4</sup> Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-64.158 (Vernon 1998 & Supp. 2005).

March 24, 2005, the Commission issued an order approving a 1.27% increase in maximum access line rates for Texas cities with Commission-approved rates.

9. P.U.C. SUBST. R. 26.465(g)(2)(A) required all CTPs to file an access line count reflecting lines in place as of December 31, 1998, no later than January 24, 2000. If a CTP could not file a 1998 access line count, that CTP could request a good cause exception and file the most recent line count available for December, 1999. Under P.U.C. SUBST R. 26.467(d), where a CTP does not provide an actual 1998 access line count, the Commission shall use the CTP's 1999 access line count to derive an estimated 1998 access line count, using estimated statewide growth rate figures.
10. The Commission's records establish a cumulative line count for all reporting CTPs within the City's municipal boundaries.
11. P.U.C. SUBST R. 26.467(c) sets out the formula the Commission shall use to develop access line rates, by category, as follows:

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.
$R1 = (A1 * B) / L1$
$R2 = (A2 * B) / L2$
$R3 = (A3 * B) / L3$
$B = (L1 * R1) + (L2 * R2) + (L3 * R3)$

12. Although eligible to participate, some municipalities did not participate in the framework established in Chapter 283 for compensation of public right-of-way usage, but are now electing to do so.
13. Verizon is the Incumbent Local Exchange Carrier (ILEC) serving the City.
14. The Commission has established maximum rates for the City using the formula established in P.U.C. SUBST. R. 26.467(c), as reflected in Exhibit A. The Commission utilized the City's Base Amount by multiplying Verizon's statewide average rates with the annual CPI adjustment and then multiplying that by the 2005 access line count for each category of access line. The City chose the default allocation ratio of 1:2.3:3.5.
15. On May 2, 2005, the City has notified the Commission of its desire to utilize the maximum rates as its city-preferred rates.
16. On April 6, 2001, the Commission determined that Chapter 283 does not authorize implementation of surcharges with respect to newly participating cities in the initial establishment of rates.<sup>5</sup>
17. Because the City desires to implement its rates as soon as possible, good cause exists, pursuant to P.U.C. PROC R. 22.5(b), to waive the requirements of P.U.C. PROC. R. 22.35(b), so that this proceeding may be considered at the Commission's next regularly scheduled Open Meeting of June 16, 2005.

### **III. Conclusions of Law**

1. The Commission has jurisdiction over this matter under Local Government Code §§ 283.005, 283.051, 283.055, and 283.058, as well as PURA §§ 14.001, 14.002, 14.003, and 52.002.

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<sup>5</sup> Open Meeting Tr. at 41-45 (April 6, 2001).

2. The fee-per-access-line rates established by the Commission, when applied to the total number of access lines by category in the City, is equal to that municipality's base amount.
3. The fee-per-access-line rates, as established by the Commission, accepted by the municipality, and shown in Exhibit A, are consistent with and meet the requirements of Chapter 283 and the Commission's rules.
4. Consistent with Finding of Fact No. 16, the Commission finds that no authority exists under Chapter 283 to allow surcharges with respect to newly participating or newly incorporated municipalities.
5. Consistent with the state policy and purposes of Chapter 283 of the Local Government Code as shown in LGC § 283.001, the Commission determines that it is necessary to employ a consistent methodology to compute accurate and reasonable statewide average rates for purposes of calculating the base amount for the City. The Commission finds that statewide average rates initially established in the year 2000 should be modified to reflect annual CPI adjustments approved by the Commission since the year 2000 in order to ensure that the resulting base amount corresponds to the time period (year 2005) for which access lines have been provided by Verizon. The Commission finds that the use of a consistent methodology allows for a fair and uniform method for compensating municipalities for the use of a public right-of-way by certificated telecommunications providers.<sup>6</sup>
6. The requirements for informal disposition pursuant to P.U.C. PROC. R. 22.35 have been met in this proceeding except for subsection (b)(2) that requires the proposed order to be served on all parties no less than 20 days before the Commission is scheduled to consider the application in an open meeting. Pursuant to P.U.C. PROC. R. 22.5(b), good cause exists to waive the 20-day requirement of P.U.C. PROC. R. 22.35(b)(2).

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<sup>6</sup> See LGC § 283.001(c).

#### IV. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following Order:

1. The fee per access line rates shall be as shown on Exhibit A for the City of East Bernard.
2. CTPs shall not impose surcharges with respect to newly participating or newly incorporated municipalities.
3. CTPs shall implement the fee-per-access-line rates as shown in Exhibit A for the City of East Bernard no later than August 1, 2005.
4. On a going-forward basis, the Commission delegates authority to the Docket Management Section of the Policy Development Division to administratively approve CPI adjusted fees per access line rates for newly participating or newly incorporated cities using statewide average rates where such statewide average rates have been adjusted to reflect the Commission approved CPI adjustment made in accordance with P.U.C. SUBST. R. 26.467(j) and TEX. LOC. GOV'T CODE § 283.055(g).

5. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are denied.

**SIGNED AT AUSTIN, TEXAS on the \_\_\_\_ day of June 2005.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**JULIE PARSLEY, COMMISSIONER**

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**PAUL HUDSON, CHAIRMAN**

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**BARRY T. SMITHERMAN, COMMISSIONER**

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Exhibit A

Municipality	2005 Maximum Rates			2005 City Preferred Rates		
	Residential	Non-Residential	Point-to-Point	Residential	Non-Residential	Point-to-Point
City of East Bernard	\$1.48	\$3.40	\$5.17	\$1.48	\$3.40	\$5.17