

The Public Utility Commission of Texas (commission) adopts new §26.171 relating to Small Incumbent Local Exchange Company Regulatory Flexibility with changes to the proposed text published in the November 12, 1999 *Texas Register* (24 TexReg 9932). The new rule replaces §23.94 of this title (relating to Small Local Exchange Carrier Regulatory Flexibility.) The rule is necessary to expedite approval of services offered by small incumbent local exchange companies (ILECs) in accordance with the Public Utility Regulatory Act (PURA), Chapter 53, Subchapter G. This new section is adopted under Project Number 17709.

When compared to §23.94, §26.171 offers the following enhancements. First, subsection (a)(2), which describes the application of the rule, is clarified to state that the rule is not applicable to cooperative corporations partially deregulated under PURA, Subchapter H, as specified in PURA §53.302. In addition, subsection (a)(2) is refined to conform to PURA §53.303 pertaining to the exclusivity of provisions in Subchapter G. Second, subsection (c), which describes filing procedures, is modified to mirror the services identified in PURA §53.304(a). Third, subsection (d), as modified, no longer contains a requirement to provide notice to customers of rate decreases. Fourth, subsection (f)(3) is added to the rule to identify the applicable rate-setting principles required by PURA §53.307. Fifth, subsection (g) of the rule is modified to describe when the commission may suspend the effective date of a tariff, pursuant to PURA §53.306(b). Sixth, subsection (i) of the rule is eliminated to be consistent with PURA §53.304(a)(1), which identifies companies eligible to file under PURA, Chapter 53,

Subchapter G, and with PURA §53.302, which identifies companies not eligible to file under Subchapter G. Seventh, references to 'experimental services' are deleted from §26.171 because there is no mention of experimental services in PURA, Chapter 53, Subchapter G.

The Appropriations Act of 1997, HB 1, Article IX, Section 167 (Section 167) requires that each state agency review and consider for re adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Such reviews include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. The commission held three workshops to conduct a preliminary review of its rules. As a result of these workshops, the commission is reorganizing its current substantive rules located in 16 Texas Administrative Code (TAC) Chapter 23 to (1) satisfy the requirements of Section 167; (2) repeal rules no longer needed; (3) update existing rules to reflect changes in the industries regulated by the commission; (4) do clean-up amendments made necessary by changes in law and commission organizational structure and practices; (5) reorganize rules into new chapters to facilitate future amendments and provide room for expansion; and (6) reorganize the rules according to the industry to which they apply. Chapter 26 has been established for all commission substantive rules applicable to telecommunications service providers.

The commission requested comments on the Section 167 requirement as to whether the original reasons for adopting the rule continue to exist. Initially, the commission determined that §23.94 was no longer necessary and proposed to repeal §23.94 without replacement. However, the commission received

comments on September 7, 1999 from the Texas Statewide Telephone Cooperative, Inc. (TSTCI), representing 20 telephone cooperatives and 16 small telephone companies, supporting readoption of the rule. Subsequently, the commission published a proposal to repeal §23.94 and to replace §23.94 with new §26.171. The commission concludes that the original reasons for adopting §23.94 continue to exist.

On December 13, 1999, the commission received comments on the proposed new §26.171 from TSTCI. The comments are summarized herein.

Comments on §26.171(d)

Subsection (d) contains the notice requirements for a statement of intent filed pursuant to §26.171. TSTCI recommended subsection (d)(1) and (2) be modified to require notice to each affected 'county' instead of each affected 'telephone exchange' to be consistent with Procedural Rule §22.51(a)(1) (relating to Notice) and to relieve small ILECs from the burden of requesting a good cause exception to the exchange-specific notice requirement in the published rule. Further, TSTCI recommended the following statement be added to subsection (d) to address special circumstances in small ILEC territories: "Newspaper notice for paragraphs (1) and (2) of this subsection shall be provided in a newspaper of general circulation in the particular area(s) affected by the proposed change if a newspaper with general circulation in the entire county does not exist."

The commission accepts the recommendations of TSTCI and modifies subsection (d) accordingly. The recommendations of TSTCI address the concern of the commission that a newspaper published within a particular county might not be distributed in every telephone exchange within that county. Subsection (d), as modified, provides certainty that notice will be published in all areas affected by a small ILEC's statement of intent.

Comments on §26.171(d)(6)

Subsection (d)(6) contains a requirement to publish notice of a statement of intent filed pursuant to §26.171 in the *Texas Register*. TSTCI recommended that subsection (d)(6) be clarified to state: "Following approval of the notice by the presiding officer, the commission shall submit notice *of the small ILEC's filing of the statement of intent* to the Texas Register for publication." (clarifying language italicized) The commission accepts the recommendation of TSTCI and modifies subsection (d)(6) accordingly.

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

This section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §§53.301-53.308.

§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 new 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 statements of intent 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 statement of intent 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 or a new service on an optional basis or make a minor change in its rates or tariffs.
- (1) **Statement of intent.** At least 91 calendar days before the effective date of the proposed change, the small ILEC shall file six copies of a statement of intent with the commission's Filing Clerk and shall serve a copy upon the Office of Public Utility Counsel. Such statement of intent shall include:
- (A) a copy of the notice required by subsection (d) of this section;
 - (B) a sufficient description of how notice will be provided 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 statement of intent.
- (2) **Response to the statement of intent.** No later than ten calendar days after the small ILEC files the statement of intent, the presiding officer assigned to the project shall notify the small ILEC of any deficiencies in the statement of intent, whether the proposed notice is approved, and whether a waiver request, if any, is granted.

(d) **Notice.** A small ILEC satisfies the notice requirements in paragraphs (1)-(5) of this subsection by completing notice no later than 61 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. Newspaper notice required in paragraphs (1) and (2) of this subsection shall be provided in a newspaper of general circulation in the particular area(s) affected by the proposed change if a newspaper with general circulation in the entire county does not exist.

(1) **Extended local calling service or new service.** For extended local calling service or for a new service, either two weeks published notice in a newspaper of general circulation in each county affected by the statement of intent or direct mail notice to each affected customer shall be required or, in the case of a cooperative, publication of notice in the cooperative's newsletter and direct mail notice to affected nonmember customers shall be required.

(2) **Rate increases.** For a rate increase, notice shall be published for four weeks in a newspaper of general circulation in each county affected by the rate increase and direct mail notice shall be provided to each affected customer.

(3) **Good cause exceptions.** The presiding officer may require for good cause that notice be provided in addition to notice proposed by the small ILEC or may waive for good cause the publication of notice requirement prescribed by this section for a proposed new service.

(4) **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 statement of intent 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.
- (5) **Proof of notice.** Within 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 direct mail notice and published notice required by this subsection and shall file a copy of each published notice.
- (6) **Texas Register notice.** Following approval of the notice by the presiding officer, the commission shall submit notice of the small ILEC's filing of the statement of intent to the Texas Register for publication.

- (e) **New service availability.** If the statement of intent concerns a new service, as defined in §26.5 of this title, that will not be offered systemwide, the small ILEC shall explain separately for each telephone exchange why the new service cannot be offered systemwide.
- (f) **Rates and revenues.** The following requirements apply to a statement of intent 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 considered under this section shall be effective on the date proposed by the small ILEC, unless the effective date is suspended.
 - (2) **Suspension.** The effective date of a proposed tariff may be suspended up to 150 calendar days to provide the commission an opportunity to review the statement of intent. Additionally, within 35 calendar days of the filing of the proof of completion of

notice, the presiding officer shall suspend the effective date if within 30 calendar days following completion of 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 statement of intent to address conditions that exist, if any, under subsection (g)(2) of this section. If conditions under subsection (g)(2) 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 statement of intent in accordance with the commission's procedural rules applicable to docketed cases.

This agency hereby certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §26.171 relating to Small Incumbent Local Exchange Company Regulatory Flexibility is hereby adopted with changes to the published text.

ISSUED IN AUSTIN, TEXAS ON THE _____ DAY OF MARCH 2000

PUBLIC UTILITY COMMISSION OF TEXAS

Chairman Pat Wood, III

Commissioner Judy Walsh

Commissioner Brett A. Perlman