

The Public Utility Commission of Texas adopts new §26.172, relating to Voting Procedures for Partial Deregulation or Reversal of Partial Deregulation of Telephone Cooperatives. This section is adopted with no changes to the text as published in the August 27, 1999 issue of the *Texas Register* (24 Tex Reg 6613). The new rule is required by the Public Utility Regulatory Act (PURA) §53.353. This new section was adopted under Project Number 17709.

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 shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or re adopting 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 specific comments on the Section 167 requirement as to whether the reason for adopting or readopting the rules continues to exist. The commission received no comments on the new rule. The commission finds that the reason for adopting the rule continues to exist.

This new section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA), which provides the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically PURA §53.353 which requires the commission by rule to prescribe the voting procedures a cooperative must use under Chapter 53, Subchapter H.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §§53.351 - 53.359.

§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.

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 rule §26.172, relating to Voting Procedures for Partial Deregulation or Reversal of Partial Deregulation of Telephone Cooperatives, is hereby adopted with no changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 4th DAY OF NOVEMBER, 1999.

PUBLIC UTILITY COMMISSION OF TEXAS

Chairman Pat Wood, III

Commissioner Judy Walsh

Commissioner Brett A. Perlman