

The Public Utility Commission of Texas (commission) proposes new §26.226, relating to Requirements Applicable to Pricing Flexibility for Chapter 58 Electing Companies. The proposed new rule will establish substantive requirements governing pricing flexibility offerings by Chapter 58 companies. The proposed new rule defines pricing flexibility, establishes pricing standards for flexibly priced offerings, and sets forth requirements for customer-specific contracts, packaging and promotional offerings, and term and volume discounts. Project Number 21155 has been assigned to this proceeding.

The commission staff received comments from parties about the scope and draft rule created in this project at two workshops convened on November 15, 1999, and March 28, 2000. The November 15, 1999 workshop focused on implementation of Senate Bill 560, while the March 28, 2000 workshop focused on several rules drafted for discussion.

Commission staff coordinated the product of this project with Project Number 21156, *Rulemaking to Implement PURA Chapter 58 Provisions Relating to Withdrawal of Election, Rate Caps and Rate Adjustments, Packaging Flexibility, and Pricing for Nonbasic Services* and in conjunction with Project Number 21159, *Rulemaking to Implement New Services and Promotional Offerings and Pricing and Packaging Flexibility for PURA Chapter 52 and 59 Companies*; Project Number 21157, *Rulemaking*

to Implement PURA Chapter 58 Provisions of New Services; and Project Number 21161, Rulemaking to Establish Process for New Services and Promotional Offerings, and Pricing and Packaging Flexibility Tariffs Pursuant to PURA Chapters 52, 58, and 59.

The language herein describes the requirements relating to pricing flexibility for Chapter 58 Companies. Several other projects propose rules pertaining to Chapter 58 companies. Project Number 21156 will propose §26.224, relating to Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies. Project Number 21157 will propose §26.225, relating to Requirements Applicable to Nonbasic Services for Chapter 58 Electing Companies. Finally, Project Number 21161 will propose §26.227, relating to Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58 Electing Companies.

Martin Wilson, Attorney, Office of Regulatory Affairs, and Diana Zake, Chief Policy Analyst, Office of Policy Development, have determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Martin Wilson and Diana Zake have determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be establishment of the conditions by which companies electing under PURA Chapter 58 may

exercise pricing flexibility, which is one of the benefits afforded such companies by statute in return for their acceptance of additional specified obligations. There will be no effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Martin Wilson and Diana Zake have also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

The commission staff will conduct a joint public hearing on this rulemaking and Project Numbers 21156, 21157, 21159, and 21161 under Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Tuesday, June 27, 2000, at 9:30 in the Commissioners Hearing Room.

Comments on the proposed new rule (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Reply comments may be submitted within 45 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. The commission also invites comments on whether it is appropriate that proposed subsection (d)(3)

contain an anti-competitive standard with respect to pricing, or whether such a standard should be developed through the facts determined in individual contested cases. All comments should refer to Project Number 21155.

This new rule is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2000) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; specifically, PURA §58.003 contains provisions for customer specific contracts, §58.004 outlines requirements for packaging, term and volume discounts, and promotional offerings, §58.063 sets forth requirements for pricing and packaging flexibility, §58.152 sets forth pricing standards, and §58.153 requires that certain notice be provided by Chapter 58 companies with more than five million access lines in the state.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 51.002(7), 51.004(a) and (b), 58.003, 58.004, 58.063(a)-(c), 58.152(b), 58.153(b).

§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).
- (b) **Purpose.** The purpose of this section is to establish requirements for a Chapter 58 electing incumbent local exchange companies (ILECs) to exercise pricing flexibility.
- (c) **Pricing flexibility.** An electing ILEC shall offer pricing flexibility in accordance with subsections (d) - (g) of 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) Except as provided by subsection (f) of this section, 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) There is a rebuttable presumption that the price of the service or package is anti-competitive against a competitor if an electing company's retail price for the service or package of services is less than the sum of the total element long run incremental cost (TELRIC)-based wholesale prices of components needed to provide the service or package of services, respectively.
- (4) The price of a package of services that includes unregulated products or services, or an affiliate's 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 or the affiliate's products or services.
- (e) **Requirements for customer-specific contracts.** An electing ILEC may enter into customer-specific contracts for certain non-basic services as provided in §26.211 of

this title. For all basic services and non-basic services not addressed in §26.211 of this title, an electing ILEC must offer customer-specific contracts pursuant to this section.

(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 not later than September 1, 2000:

(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:

- (i) until the earlier of 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.

(f) **Requirements for packaging and promotional offerings.** An electing company that has more than five million access lines in this state may not offer in an exchange a service listed in PURA §58.151(1)–(4) as a component of a package of services or as a promotional offering until the company makes the reduction in switched access service rates required by PURA §58.301(2), unless the customer of one of the pricing flexibility offerings described in this subsection is a federal, state, or local governmental entity. An electing ILEC serving more than five million access lines shall provide notice of promotional offerings of basic or nonbasic services pursuant to PURA §58.153(b), by filing notice pursuant to §26.227 of this title.

- (g) **Requirements for term and volume discounts.** Until September 1, 2000, an electing ILEC serving more than five million access lines shall not offer term or volume discounts on any service listed in PURA §58.151(1)–(4) to entities that are not federal, state or local governments.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 4th DAY OF MAY 2000 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**