

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.

Subchapter J. COSTS, RATES AND TARIFFS.

§26.230. Requirements Applicable to Chapter 65 One-day Informational Notice Filings.

- (a) **Application.** This section applies to incumbent local exchange companies (ILECs), as defined in the Public Utility Regulatory Act (PURA) §51.002(3), with markets deregulated pursuant to PURA Chapter 65 who choose to offer services through one-day informational notice filings pursuant to PURA §§65.151-65.153. Except as provided in subsection (i) of this section, a transitioning company, as defined in PURA §65.002(5), which does not choose to offer services through a one-day informational notice filing must either offer services through ten-day informational notice filings pursuant to §§26.227-26.229 of this title (relating to Costs, Rates and Tariffs) or through filings pursuant to §§26.207-26.211 of this title (relating to Costs, Rates and Tariffs).
- (b) **Purpose.** The purpose of this section is to establish the requirements for a transitioning ILEC that chooses to provide an informational notice to introduce new services, and/or to exercise pricing flexibility for basic and non-basic retail telecommunications services, and to outline the procedures for processing complaints regarding service offerings introduced by such informational notice filings.
- (c) **Pricing standards.**
- (1) In a market that remains regulated, the transitioning ILEC shall price its retail services in accordance with the provisions as set forth in §§26.224-26.226 of this title (relating to Costs, Rates and Tariffs).
 - (2) In a deregulated market, the transitioning ILEC shall price its retail services as follows:
 - (A) for all services, other than residential service, at a price equal to or higher than the service's long run incremental costs (LRIC); and
 - (B) for basic local telecommunications service, at any price higher than the lesser of the service's LRIC or the tariffed price on the date the market was deregulated.
 - (3) Notwithstanding any other long-run incremental cost filing requirements in this subchapter, a transitioning company, upon written notice to the commission, is not required to comply with a direct or indirect requirement to price a residential service at, above, or according to the long-run incremental cost of the service or to otherwise use long-run incremental cost in establishing prices for residential services or to file with the commission a long-run incremental cost study for any service. .
 - (4) Notwithstanding paragraphs (2) and (3) of this subsection, a transitioning company may not:
 - (A) establish a retail rate, term, or condition that is anticompetitive or unreasonably preferential, prejudicial, or discriminatory;
 - (B) establish a retail rate for a basic or non-basic service in a deregulated market that is subsidized either directly or indirectly by a basic or non-basic service provided in an exchange that is not deregulated; or
 - (C) engage in predatory pricing or attempt to engage in predatory pricing. A rate or price for a basic local telecommunications service is not anticompetitive, predatory, or unreasonably preferential, prejudicial, or discriminatory if the rate or price is equal to or greater than the rate or price in the transitioning company's tariff, or price list, for that service in effect on the date the transitioning company submits notice to the commission under paragraph (3) of this subsection.
 - (5) In each deregulated market, a transitioning company shall make available to all residential customers throughout that market the same price, terms, and conditions for all basic and non-basic retail telecommunications services, consistent with any pricing flexibility available to the company on or before August 31, 2005.
 - (6) A rate that meets the pricing requirements of paragraph (2) of this subsection is deemed compliant with paragraph (4)(B) of this subsection.
 - (7) A transitioning company may offer to an individual residential customer a promotional offer that is not available uniformly throughout the market if the company makes the offer through

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a medium other than direct mail or mass electronic media and the offer is intended to retain or obtain a customer.

- (d) **Procedures related to the filing of one-day informational notices and associated tariffs.** The provisions of this subsection apply to ILECs choosing to introduce new services and/or exercise pricing and packaging flexibility through one-day informational notice filings.

(1) **Notice requirements.**

(A) A transitioning ILEC shall provide notice of an impending informational notice filing to the commission, the Office of Public Utility Counsel (OPC), and to any person who holds a certificate of operating authority in the transitioning ILEC's certificated area or areas, or who has an effective interconnection agreement with the transitioning ILEC. Such notice shall inform the recipient of the nature and material terms of the impending filing.

(B) Unless an interconnection agreement contract specifies otherwise, an incumbent local exchange carrier shall continue to provide to affected resellers of retail services the same notice of rate changes or withdrawal of detariffed services that it was required to provide prior to detariffing.

(2) **Filing requirements.**

(A) **Filing of informational notice and confidential information.** At the time the informational notice is filed in Central Records, a copy of the informational notice shall be delivered to OPC. Copies of confidential information shall be filed in Central Records in accordance with §22.71(d) of this title (relating to Filings of Pleadings, Documents and Other Materials).

(B) **Format of filing.** An informational notice under this section must include the same elements as set forth in §26.227(c)(2)(D) of this title (relating to Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58 Electing Companies) and the following:

(i) For retail services offered in regulated markets, the transitioning company must demonstrate that the rates, terms, and conditions comply with the requirements of subsection (c)(1) of this section and affirm that the said rates, terms and conditions comply with requirements in subsection (c)(4) of this section.

(ii) For retail services offered in deregulated markets, the transitioning company must demonstrate that the rates, terms, and conditions comply with requirements in subsection (c)(2), and (4)-(7) of this section.

(C) **Access to confidential information.** Access to confidential information filed with the commission as part of an informational notice filing shall be available to commission staff and OPC, upon execution of a commission approved protective agreement.

(D) **Effective date.** A transitioning ILEC's service offering shall be effective one day after the transitioning ILEC files an informational notice with the commission.

- (e) **Notice of deficiencies and disputes as to sufficiency or appropriateness of one-day informational notice filings.**

(1) The commission staff may file a notice of deficiency for incomplete filings or non-compliant filings or a pleading alleging that the service offering is inappropriately filed as a one-day informational notice.

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- (2) Within five working days after the date of the commission staff's filing, an applicant shall file an explanation of the actions it has taken or intends to take in response to the notice or pleading filed under paragraph (1) of this subsection.
 - (3) Disputes as to sufficiency or appropriateness of one-day informational notice filings shall be subject to the provisions of §26.227(d) of this title.
- (f) **Complaints.**
- (1) An affected person may file a complaint at the commission challenging whether a transitioning company is complying with subsection (c) of this section.
 - (2) Notwithstanding subsection (c)(3) of this section, the commission may require a transitioning company to submit a long-run incremental cost study for a business service that is the subject of a complaint submitted under paragraph (1) of this subsection.
- (g) A telecommunications provider that is not subject to rate-of-return regulation under PURA, Chapter 53:
- (1) may, but is not required to, maintain on file with the commission tariffs, price lists, or customer service agreements governing the terms of providing service ;
 - (2) may make changes in its tariffs, price lists, and customer service agreements in relation to services that are not subject to regulation without commission approval; and
 - (3) may cross-reference its federal tariff in its state tariff if the provider's intrastate switched access rates are the same as the provider's interstate switched access rates.
- (h) A telecommunications provider may withdraw a tariff, price list, or customer service agreement not required to be filed or maintained with the commission under this section if the provider:
- (1) files written notice of the withdrawal with the commission; and
 - (2) notifies its customers of the withdrawal and posts the current tariffs, price lists, or generic customer service agreements on its Internet website.
- (i) A deregulated company or a transitioning company is not required to obtain advance approval for a filing with the commission or a posting on the company's Internet website that adds, modifies, withdraws, or grandfathers:
- (1) a nonbasic retail service or the service's rates, terms or conditions; or
 - (2) for a market that has been deregulated, a basic network service or the service's rates, terms or conditions.