

**PROJECT NO. 24524**

<b>RULEMAKING TO IMPLEMENT SB</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>1659, 77<sup>TH</sup> LEGISLATURE, FORMAT</b>	<b>§</b>	
<b>OF TELECOMMUNICATIONS</b>	<b>§</b>	<b>OF TEXAS</b>
<b>UTILITY BILLING STATEMENTS</b>	<b>§</b>	
	<b>§</b>	

**ORDER ADOPTING AMENDMENT TO §26.25  
AS APPROVED AT THE SEPTEMBER 25, 2002 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts an amendment to §26.25, relating to Issuance and Format of Bills, with changes to the proposed text as published in the June 21, 2002 *Texas Register* (27 TexReg 5346). The amendment implements Senate Bill 1659 (SB 1659), 77th Legislature (2001 Texas General Laws 1931) and Public Utility Regulatory Act (PURA) §55.016, which requires the annual review of billing-format changes of certificated telecommunications utilities (CTUs) (companies that provide local telephone service). Also pursuant to PURA §55.016, the amendment provides somewhat greater flexibility to CTUs in clearly identifying all charges, surcharges, assessments, and taxes appearing on the CTUs' bills.

This amendment is adopted under Project Number 24524. Two additional projects will be established in which commission staff will annually review the billing-format changes implemented by CTUs for compliance with §26.25 requirements.

On July 22, 2002, seven parties filed comments on the proposed amendment. These parties were AT&T Communications of Texas, L.P. (AT&T), Consumers Union Southwest Regional Office

(CUSW), MCI Telecommunications (MCI), Office of Public Utility Council (OPC), State of Texas (State), Southwestern Bell Telephone Company (SWBT), and Texas Statewide Telecommunications Cooperative, Inc. (TSTCI). On July 29, 2002, Southwest Competitive Telecommunications Association (SWCTA) submitted joint late-filed Comments with the Association of Communications Enterprises (ASCENT) and the Competitive Telecommunications Association (CompTel) (collectively the Associations).

Four parties filed reply comments in this project. MCI filed reply comments on August 2, 2002, the due date for replies. The State and AT&T filed reply comments on August 5th and 6th, respectively. SWBT filed reply comments on August 12, 2002.

*§26.25(b), Purpose*

MCI recommended a stylistic change to subsection (b), to read as follows: "Purpose. The purpose of this section is to specify the information that residential customer bills containing charges for local telephone service should include."

The commission finds that the wording in the published version of subsection (b) is just as clear as that in MCI's version. Therefore, the commission declines to make this change.

*§26.25(d), Billing information*

Additionally, MCI expressed approval of the commission's proposed change in subsection (d) (1)-(2), to allow CTUs the option of sending customer bills via a mail service other than the United States Postal Service.

*§26.25(e), Bill content requirements*

The State recommended changing the last sentence of the introductory paragraph in subsection (e) to clarify that the standards applying to paper bills will substantially apply to Internet bills as well: "Bills rendered via the Internet shall provide the information specified in this subsection in a manner substantially similar to that set out below in subsections (1)-(7)."

AT&T and MCI opposed the State's recommendation as needlessly restrictive. AT&T noted that there are no pages on an Internet bill, and the format is subject to the customer's desires. Moreover, AT&T opined, the State's suggested approach would stifle the very innovation that electronic billing allows. MCI expressed similar views and asserted that the language "in a readily discernible manner" adequately addresses the needed standards for Internet billing.

The commission agrees with MCI and AT&T regarding the innovation allowed by electronic billing and the adequacy of the phrase "in a readily discernible manner." Therefore, the commission declines to make the change to the introduction to subsection (e) proposed by the State.

Commenting on proposed §26.25(e)(1)(C), AT&T agreed that the requirement for notice of a change in the identity of a service provider on the first page of the customer's bill is consistent with the Federal Communications Commission's (FCC's) requirements at 47 C.F.R. §64.2001(a)(2)(ii). However, AT&T noted that the FCC's requirement is more flexible and allows the carrier to place this information wherever it chooses on the bill. AT&T requested that the commission either adopt the flexibility of the FCC standard or change this requirement to allow the placement of the provider information on *either* page one or page two of the bill.

As stated in 64 Fed. Reg. 56,177 (1999), §64.2001 was renumbered as §64.2401, effective October 18, 1999. Later, as part of an amendment effective July 13, 2000, §64.2401(a)(2)(ii) was modified and renumbered as §64.2401(a)(3) (65 Fed. Reg. 43,258 (2000)).

In its reply comments, MCI supported AT&T's position, asserting that placing the change-of-provider notification on the first page is no more helpful to end users than locating the information elsewhere in the bill.

The State, OPC, and the Associations supported keeping the change-of-provider notification on the first page of the bill. The State asserted that this requirement lessens the risk of customer confusion or abuse. OPC agreed, and claimed that a review of sample CTU bills indicates that there is adequate

room on the first page to locate this information. OPC further maintained that such information is more important to consumers than advertisements and other information often included on the first page.

Although the Associations supported retaining the change-of-provider notification requirement on the bill's first page to benefit consumers, the Associations observed that many carriers do not bill and collect for other carriers, and opined that the change-of-provider notification requirement does not apply to such carriers. To support the latter contention, the Associations noted that the FCC in 2000 amended 47 C.F.R. §64.2401(a)(3) to limit the definition of *new service provider* to a provider that has a continuing relationship with the subscriber that will result in periodic charges on the subscriber's bill. Accordingly, the Associations proposed beginning subsection (e)(1)(C) with the following language: "where charges of two or more carriers appear on the same telephone bill, the bill must include...." This addition, the Associations stated, would resolve the issue for CTUs that have no billing and collection agreements with other carriers and would also conform to the FCC's Truth-in-Billing requirement in 47 C.F.R. §64.2401(a)(3). MCI agreed with the Associations' analysis and recommended remedy.

SWCTA actually referred to 47 C.F.R. §64.2001(a)(3). As stated in 64 Fed. Reg. 56,177 (1999), however, §64.2001 was renumbered as §64.2401, effective October 18, 1999. The key wording referred to by SWCTA appeared in §64.2401(a)(3), as part of an amendment effective July 13, 2000 (65 Fed. Reg. 43,258 (2000)).

SWBT expressed concern that the change-of-provider notification requirement could pose a problem for a carrier when a customer has authorized multiple service-provider changes in a short time. SWBT requested that the subsection be revised to allow a reasonable length of time for the CTU to reflect such changes, and suggested adding a provision permitting a billing cycle to implement this notice. In reply comments, MCI stated its agreement with SWBT's suggestion.

The State replied that it does not understand SWBT's concern regarding customers who authorize multiple service-provider changes in a short time. It opined that the current language should be adequate. In the State's view, nothing in the commission's proposed language requires out-of-billing-cycle notice; in cases in which multiple service-provider changes occur, the changes will just be shown on the CTU's next bill.

The commission declines to make the changes recommended by the various parties to §25.26(e)(1)(C). With respect to the Associations' proposal, the commission notes that although the FCC did amend 47 C.F.R. §64.2401(a) in the manner described by the Associations, the order adopting that amendment did not specifically address cases in which CTUs do not bill and collect on behalf of other service providers. Rather, the relevant parts of the order focus on the distinction between charges resulting from a continuing relationship with the subscriber and charges incurred on merely a per-transaction basis. For example, paragraph five of the order says that whereas "changes in a subscriber's presubscribed local and long-distance service providers clearly would be subject to the rule... our modified rule excludes services billed solely on a per transaction basis, such as dial-around

interexchange access service, operator service, directory assistance, and non-recurring pay-per-call services." Moreover, the reference in 47 C.F.R. §64.2401(a)(3) to "periodic charges on the subscriber's bill" need not be interpreted as referring to only the bill sent by the CTU; it could be interpreted as referring to a bill sent by another service provider. The commission considers the notification by CTUs of changes in subscribers' ongoing service providers to be an important safeguard against slamming. Even if their CTU does not bill and collect on behalf of other service providers, subscribers may contact their CTU to identify or change or place a freeze on their presubscribed service provider(s). In light of these considerations and the lack of a clear prohibition in 47 C.F.R. §64.2401(a)(3), the commission finds that it is good public policy to continue to require CTUs without billing and collection contracts with other providers to provide notification of changes in their subscribers' service providers.

The commission declines to allow CTUs to omit any mention of service-provider changes from the bill's first page. As observed by the State, OPC, and the Associations, placing the change-of-provider notification on the first page serves to reduce slamming and confusion of customers. Moreover, the commission notes (as did MCI in its initial comments) that the proposed provision already affords flexibility to CTUs in stating that the "notification may be accomplished with a sentence that directs the customers to details of this change located elsewhere on the bill."

The commission agrees with the State that the published provision need not be modified to allow adequate time to CTUs to include change-of-provider notification on bills. CTUs should simply include

notification of any service-provider changes on their customers' bills in the first practicable billing cycle.

In addition, if a customer makes multiple provider changes during the same billing period, the CTU can detail those changes on later pages of the bill.

OPC expressed concern about removing the phrase "clearly and conspicuously displayed" from the beginning of subsection (e)(2). OPC thus suggested replacing the published introductory language with the following: "Each residential customer's bill shall clearly and conspicuously provide sufficient information to understand the basis and source of the charges set out in the bill, including:".

AT&T, MCI, and SWBT opposed OPC's suggestion. AT&T opined that the commission's published language accurately reflects the statutory requirements and that the requirement to provide customers "sufficient information to understand the basis and source of the charges in the bill" should ensure that the information is readily discernible to customers.

The commission agrees to add the term "clear and conspicuous" to the introductory language of subsection (e)(2), so that it would read, "Each residential customer's bill shall include the following information in a clear and conspicuous manner that provides customers sufficient information to understand the basis and source of the charges in the bill: ...." This addition may reduce the temptation for some CTUs to print such information in inappropriately small font or otherwise obscure it.

MCI stated its approval of the deletions from subsection (e)(2)(A)-(C) and the addition of related language at the start of subsection (e)(2). MCI also supported the other changes contained in subsection (e)(2)(A)-(F), regarding the specific charges a bill must identify and explain.

SWBT recommended adding in proposed subsection (e)(2)(A) and (B) a specific reference to subsection (e)(4), to clarify that charges for bundled-service packages need not be separately itemized according to their individual features. Such a reference, SWBT stated, would eliminate any possibility of an interpretation that the components of a flat-rated package would need to be broken out, with some features perhaps being associated with a zero rate.

The commission believes that subsection (e)(4) clearly conveys the message SWBT seeks. Accordingly, the commission finds that SWBT's suggestion is unnecessary and declines to adopt it.

CUSW criticized the published rule on the view that it increases the likelihood of customer confusion and reduces customers' ability to verify charges by permitting CTUs to hide the amounts of fees and surcharges. To correct this deficiency, CUSW recommended two related changes. First, CUSW proposed deleting subsection (e)(6), which allows CTUs the option of not including on the bill the amount and/or method of calculation of specific taxes, fees, and surcharges, and instead requiring customers to call a toll-free number to obtain such information. Subsection (e)(6) also states that if a federal law or regulation requires that a charge be separately stated, using a standardized label, the requirement may be met with an asterisk, a footnote, or a statement. Second, CUSW proposed

modifying subsection (e)(2)(D) to read as follows: "applicable taxes, fees, and surcharges, showing the specific amount associated with each charge. If federal law or regulation requires that a charge be separately stated, using standardized labels, the CTU must also include the amount associated with each such charge."

AT&T opposed modifying subsection (e)(2)(D) in the manner recommended by CUSW. AT&T observed that, until now, when the Legislature has determined that separately stating a particular tax, fee, or surcharge was important, it has included that requirement in the statute imposing the tax, fee, or surcharge. The commission, in AT&T's view, should continue to allow existing state law to govern the treatment of such taxes, fees, and surcharges, while allowing CTUs the flexibility to simplify the presentation of their bills to the extent allowed by law. On the other hand, AT&T endorsed CUSW's call for the deletion of subsection (e)(6), stating that the provision addresses a potential federal matter that may or may not be implemented; if it is, that law or regulation may address the issues in question.

The commission agrees to the substance of CUSW's recommendation. Specifically, subsection (e)(2)(D) will be amended to read, "applicable taxes, fees, and surcharges, showing the specific amount associated with each charge;". The commission finds that requiring this itemization is in keeping with the requirement at the beginning of subsection (e)(2) that the bill provide the customer sufficient information to understand the basis and source of the charges on the bill. The commission finds that it is unnecessary to add the final sentence suggested by CUSW to subsection (e)(2)(D), however, as federally imposed charges are covered by the general language being added. The commission also

accepts the recommendation of CUSW and AT&T to delete subsection (e)(6). Revised subsection (e)(2), including subsection (e)(2)(D), is flexible enough to accommodate a standardized label for a federally imposed charge. Note that with the deletion of published subsection (e)(6), what was published as subsection (e)(7) is now subsection (e)(6).

The State recommended modifying the first sentence of published subsection (e)(7) (now (e)(6)) to read as follows: "Bills shall provide, in a clear and conspicuous manner, a toll-free number that a customer can call to resolve disputes and obtain information from the CTU." Making the toll-free number stand out, the State claimed, is the most helpful means of assisting consumers who have questions or problems relating to their bills.

The commission accepts the State's suggestion. Such a toll-free number should be easily noticed by customers.

*§26.25(f), Compliance review of bill formats*

Several parties commented on subsection (f), which provides for compliance review of bill-format changes. After expressing support for the commission's effort to implement SB1659 in the amended rule, TSTCI opined that the proposed review processes are simple and not burdensome for small incumbent local exchange companies (ILECs). SWBT suggested that the commission add a phrase stating that commission approval of a format change shall be accompanied with a finding that the change

meets the standards specified in PURA §55.016. SWBT expressed hope that the commission's finding could provide guidance as to what constitutes "sufficient information" and "clear identification," referenced in PURA §55.016(b) and (c). The State replied that requiring a specific finding of compliance with PURA §55.016 would be inappropriate in a rulemaking proceeding. In the State's view, such a finding would be appropriate only in an adjudicatory proceeding in which all interested or affected parties could participate. Accordingly, the sort of finding requested by SWBT would be appropriate only in a docketed proceeding, which under subsection (f) already is provided as a possibility following the commission staff's initial review.

OPC supported the commission's review of CTU billing formats but expressed concern regarding the deadlines included in this subsection. OPC contended that despite the commission's best efforts the deadlines may be difficult to meet. Therefore, OPC recommends that a new subsection (f)(3) be added, to read as follows: "Waiver of deadlines. The commission may waive the deadlines established above for good cause. Notice of the extension must be provided to the CTU on or before the deadline(s) for commission action on the CTU's filing."

AT&T, MCI, and SWBT recommended that the commission reject OPC's recommendation to add this waiver-of-deadline language. These parties noted that the commission's Substantive Rule §26.3 already allows such waivers for good cause.

The State recommended revising subsection (f) to clarify that Internet or other electronic billing-format changes will be reviewed. However, MCI and AT&T opposed this recommendation. Citing the first sentence of proposed subsection (f), MCI opined that the published language is broad enough to encompass the review of changes to Internet bills. AT&T gave a different reason for opposing the State's recommendation, noting that Internet billing allows customers to have greater control over their own billing format. AT&T stated that, if taken literally, the State's proposal could require the commission to approve any customer-requested format. This flexibility should not be restricted, AT&T contended.

The commission declines to make any of the suggested changes to subsection (f). The commission agrees with the State that requiring a specific finding of compliance with PURA §55.016 would be inappropriate in the staff's compliance review. With respect to adding a waiver provision, the commission agrees with AT&T, MCI, and SWBT that an adequate waiver provision already exists in §26.3 of this title (relating to Severability Clause). Regarding the State's suggestion to explicitly include Internet bill-format changes in the compliance review, the commission agrees that the current language is broad enough to allow staff discretion to investigate such changes when requested. A general requirement for reviewing such changes, however, is not desirable, as suggested by AT&T.

In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2002) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, §55.016, which requires the commission to conduct an annual review of bill-format changes made by certificated telecommunications utilities (CTUs).

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §55.016.

**§26.25. Issuance and Format of Bills.**

- (a) **Application.** The provisions of this section apply to residential-customer bills issued by all certificated telecommunications utilities (CTUs). CTUs shall comply with the changes required by this section within six months of the effective date of the section.
- (b) **Purpose.** The purpose of this section is to specify the information that should be included in a user-friendly, simplified format for residential customer bills that include charges for local exchange telephone service.
- (c) **Frequency of bills and billing detail.** Bills of CTUs shall be issued monthly for any amount unless the bill covers service that is for less than one month, or unless through mutual agreement between the company and the customer a less frequent or more frequent billing interval is established. Through mutual agreement with the CTU, a customer may request and receive a bill with more detailed or less detailed information than otherwise would be required by the provisions of this section if the CTU also will provide the customer with detailed information on request.
- (d) **Billing information.**

- (1) All residential customers shall receive their bills via the United States mail, or other mail service, unless the customer agrees with the CTU to receive a bill through different means, such as electronically via the Internet.
  - (2) Customer billing sent through the United States mail, or other mail service, shall be sent in an envelope or by any other method that ensures the confidentiality of the customer's telephone number and/or account number.
  - (3) A CTU shall maintain by billing cycle the billing records for each of its accounts for at least two years after the date the bill is mailed. The billing records shall contain sufficient data to reconstruct a customer's billing for a given month. A copy of a customer's billing records may be obtained by the customer on request.
- (e) **Bill content requirements.** The following requirements apply to bills sent via the U.S. mail, or other mail service. Bills rendered via the Internet shall provide the information specified in this subsection in a readily discernible manner.
- (1) The first page of each residential customer's bill containing charges for local exchange telephone service shall include the following information, clearly and conspicuously displayed:
    - (A) the grand total amount due for all services being billed;
    - (B) the payment due date; and
    - (C) a notification of any change in the identity of a service provider. The notification should describe the nature of the relationship with the customer, including the

description of whether the new service provider is the presubscribed local exchange or interexchange carrier. For purposes of this subparagraph, "new service provider" means a service provider that did not bill the customer for services during the service provider's last billing cycle. This definition shall include only providers that have continuing relationships with the customer that will result in periodic charges on the customer's bill, unless the service is subsequently canceled. This notification may be accomplished with a sentence that directs the customers to details of this change located elsewhere on the bill.

- (D) If possible, the first page of the bill shall list each applicable telephone number or account number for which charges are being summarized on the bill. If such inclusion is not possible, the first page shall show the main telephone number or account number, and subsequent pages shall clearly identify the additional numbers.
- (2) Each residential customer's bill shall include the following information in a clear and conspicuous manner that provides customers sufficient information to understand the basis and source of the charges in the bill:
- (A) the service descriptions and charges for local service provided by the billing CTU;
  - (B) the service descriptions and charges for non-local services provided by the billing CTU;

- (C) the service description, service provider's name, and charges for any services provided by parties other than the billing CTU, with a separate line for each different provider;
  - (D) applicable taxes, fees and surcharges, showing the specific amount associated with each charge;
  - (E) the billing period or billing end date; and
  - (F) an identification of those charges for which non-payment will not result in disconnection of basic local telecommunications service, along with an explicit statement that failure to pay these charges will not result in the loss of basic local service; or an identification of those charges that must be paid to retain basic local telecommunications service, along with an explicit statement that failure to pay these charges will result in the loss of basic local service.
- (3) Charges must be accompanied by a brief, clear, non-misleading, plain-language description of the service being rendered. The description must be sufficiently clear in presentation and specific enough in content to enable customers to accurately assess the services for which they are being billed. Additionally, explanations shall be provided for any non-obvious abbreviations, symbols, or acronyms used to identify specific charges.
- (4) Charges for bundled-service packages that include basic local telecommunications service are not required to be separately stated. However, a brief, clear, non-misleading, plain-language description of the services included in a bundled-service package is required to be provided either in the description or as a footnote.

- (5) Each customer's bill shall include specific per-call detail for time-sensitive charges, itemized by service provider and by telephone or account number (if the customer's bill is for more than one such number). Each customer's bill shall include the rate and specific number of billing occurrences for per-use services, itemized by service provider and by telephone or account number. Additionally, time-sensitive charges and per-use charges may be displayed as subtotals in summary sections of the bill.
- (6) Bills shall provide a clear and conspicuous toll-free number that a customer can call to resolve disputes and obtain information from the CTU. If the CTU is billing the customer for any services from another service provider, the bill shall identify the name of the service provider and provide a toll-free number that the customer can call to resolve disputes or obtain information from that service provider.
- (f) **Compliance review of bill formats.** A CTU shall file for review a copy of any portion of its bill format that has not previously been reviewed and approved by the commission pursuant to this section. The CTU will be advised if the format does or does not comply with the requirements of this section. Two alternative projects will be established for such reviews. CTUs may submit new or altered bill formats in either of these projects as follows:
- (1) **Expedited review.** The commission staff shall establish a project for expedited reviews. CTUs may submit proposed new bills or bill format changes prior to implementation in the expedited review project. A notice of sufficiency or a notice of deficiency will be issued to the CTU within 15 business days. The CTU may appeal a

notice of deficiency by requesting its submission be docketed for further review or may respond with a revised submission that corrects the deficiency within ten business days of the deficiency notice. The CTU's revised submission will be reviewed and either a notice of sufficiency or a notice of deficiency will be issued within 15 business days. This process will be repeated until the CTU's submission has received a notice of sufficiency or the CTU has requested that its submission be docketed as a contested case. A contested case may also be requested by commission staff to resolve disputes regarding the CTU's submission.

- (2) **Annual review.** The commission staff shall establish a project for annual reviews. CTUs may choose to file bill format changes in the annual review project. If the CTU's bill format change has already been approved pursuant to paragraph (1) of this subsection, the CTU does not need to file the same changes under the annual review process. Submissions for annual review must be made between September 1st and October 1st each year. All submissions shall be responded to with a notice of sufficiency or deficiency issued no later than November 15th of that year. A CTU may appeal a notice of deficiency by requesting its submission be docketed for further review or may respond with a revised submission that corrects the deficiency within ten business days of the deficiency notice. Revised submissions will be reviewed within 15 business days and a new notice of either sufficiency or deficiency will be issued. This process will be repeated until the CTU's submission has received a notice of sufficiency or the CTU has requested that its submission be docketed as a contested case. A

contested case may also be requested by commission staff to resolve disputes regarding the CTU's submission.

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 §26.25, relating to Issuance and Format of Bills, is hereby adopted with changes to the text as proposed.

**ISSUED IN AUSTIN, TEXAS ON THE \_\_\_\_\_ DAY OF September, 2002.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**Rebecca Klein, Chairman**

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**Brett A. Perlman, Commissioner**