

**PROJECT NO. 24305**

**RULEMAKING RELATED TO § PUBLIC UTILITY COMMISSION**  
**ESTABLISHMENT OF UNIFORM §**  
**COST RECOVERY METHODS FOR §**  
**9-1-1 DEDICATED TRANSPORT § OF TEXAS**

**ORDER ADOPTING NEW §26.435 RELATING TO**  
**COST RECOVERY METHODS FOR 9-1-1 DEDICATED TRANSPORT**  
**AS APPROVED AT THE JULY 25, 2002 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts new §26.435 relating to Cost Recovery Methods for 9-1-1 Dedicated Transport with changes to the proposed text as published in the March 1, 2002 *Texas Register* (27 TexReg 1418). This new section provides consistency and uniformity of 9-1-1 cost recovery for dedicated transport for 9-1-1. The rule establishes uniform, consistent methods or mechanisms by which certified telecommunications providers (CTUs) may recover costs for 9-1-1 dedicated transport. This new section is adopted under Project Number 24305.

This rulemaking was initiated by the commission in 2001 to develop uniform, consistent, and fair methods or mechanisms by which telecommunications providers may recover costs for 9-1-1 dedicated transport. The commission held workshops on July 31, 2001 and October 23, 2001 to provide interested parties with opportunities to comment on the scope of this proceeding. Subsequently, on November 9, 2001, the 9-1-1 Agencies submitted a draft rule to the commission. The commission published the proposed rule on March 1, 2002 with additional questions. The commission, on March 8, 2002, issued a memo requesting additional comments on the two optional methods for cost recovery proposed by Southwestern Bell Telephone Company (SWBT) at the public hearing. A

public hearing was held on April 25, 2002 to elicit further comment from interested parties on additional issues related to the published rule.

The preamble to the proposed rule, as published, asked stakeholders to provide general comments on the proposed rule and to comment specifically on four issues posed in the preamble. The commission received initial and reply written comments on the proposed new section from AT&T Communications of Texas, LP (AT&T); Allegiance Telecom of Texas, ICG Communications, Inc., Time Warner Telecom of Texas, LP, and XO Texas, Inc., collectively known as a coalition of competitive local exchange carriers (CLEC Coalition); the Commission on State Emergency Communications (CSEC), the districts created pursuant to Texas Health and Safety Code Chapter 772, including Bexar Metro 9-1-1 Network, Brazos County Emergency Communication District, Calhoun County 9-1-1 Emergency Communication District, DENCO Area 9-1-1 District, 9-1-1 Network of East Texas, Emergency Communication District of Ector County, Galveston County Emergency Communication District, Greater Harris County 9-1-1 Emergency Network, Henderson County 9-1-1 Communication District, Howard County 9-1-1 Communication District, Kerr County Emergency 9-1-1 Network, Lubbock County Emergency Communication District, McLennan County Emergency Communication District, Montgomery County Emergency Communication District, Potter-Randall County Emergency Communications District, Tarrant County 9-1-1 District, and Texas Eastern 9-1-1 Network (collectively Texas 9-1-1 Agencies); Cities of Plano and Dallas, Texas (Home-Rule Cities); SWBT; Texas Statewide Telephone Cooperative, Inc. (TSTCI); Verizon Southwest (Verizon); WorldCom, Inc. (WCOM); and W.T. Services, Inc. In

addition, the commission received comments on its May 8, 2002 memo from SWBT, Home-Rule Cities, WCOM, Verizon, AT&T, W.T. Services, and CLEC Coalition.

***Preamble Issue Number 1:** Should the costs for 9-1-1 dedicated transport be apportioned equally between CTUs originating the 9-1-1 call and the 9-1-1 network services provider, as defined in §26.433 of this title (relating to Roles and Responsibilities of 9-1-1 Service Providers)? In your response, please compare and contrast possible network arrangements (e.g. incumbent local exchange company (ILEC) to ILEC vs. competitive local exchange company (CLEC) to ILEC).*

The CLEC Coalition, SWBT, and Verizon stated that costs for 9-1-1 dedicated transport should not be equally apportioned between CTUs originating the 9-1-1 call and the 9-1-1 network services provider. The CLEC Coalition indicated that a rural ILEC or CLEC may transport a 9-1-1 call great distances to reach the selective router or tandem switch of the network services provider, so that it should be entitled to a greater proportion of the recovery than the network services provider. Consequently, according to the CLEC Coalition, the costs for 9-1-1 dedicated transport should be prorated, based on the relative distance that each of the two carriers involved must transport the call.

SWBT and Verizon stated that in the non-competitive environment, ILECs have traditionally maintained jointly provisioned architectures, which allowed the originating CTU and the 9-1-1 network services provider to share in 9-1-1 transport costs. SWBT explained that ILEC to SWBT architectures are provisioned jointly by the parties,

meeting at the Exchange Area Boundary (EAB) between each incumbent's geographical operating territories. SWBT asserted that this historical allocation model does not allow for sufficient compensation for the miles of physical transport that all ILECs and SWBT must provide. SWBT stated that in this jointly provisioned architecture, each ILEC and SWBT must routinely provide 28 physical miles of 9-1-1 transport facilities to each 9-1-1 selective router in the State of Texas. SWBT also commented that CLECs have greatly reduced 9-1-1 transport costs, because CLECs do not have to provide the multiple 9-1-1 transport serving arrangements that ILECs and SWBT routinely provide. Verizon noted that this type of meet point/revenue sharing arrangement is reasonable where ILECs are involved because they have established boundaries and can reasonably anticipate the costs and benefits of entering into such arrangements. In contrast, Verizon opined, CLECs have no designated boundaries; they can choose where to serve and where to construct their central offices.

The CLEC Coalition disagreed with SWBT and Verizon's comments about costs related to 9-1-1 dedicated transport. CLEC Coalition stated since SWBT must provide much lengthier transport for ILECs than for CLECs, that it is irrational to claim that SWBT should be entitled to charge CLECs more than other ILECs when SWBT's investment in the necessary facilities to connect with CLECs is substantially less than it is for connecting with other ILECs. CLEC Coalition commented that SWBT and Verizon have many millions of customers from which they receive revenue and over which they may spread the costs of all their network facilities. CLEC Coalition further commented that much of the ILEC networks were built during rate-of-return regulation when they were

guaranteed a profit. CLECs have never had such a luxury in deploying their facilities nor do they have the vast customer base over which to spread their costs.

WCOM stated that it supports the equal apportionment of cost for 9-1-1 dedicated transport.

Texas 9-1-1 Agencies remained neutral on the apportionment issue due to insufficient information.

The commission finds that the costs for 9-1-1 dedicated transport should not be apportioned equally between CTUs originating the 9-1-1 call and the 9-1-1 network services provider. There is insufficient evidence in the record to indicate that the historical allocation method between ILECs does not allow for sufficient compensation for miles of physical transport. The commission recognizes that some CTUs may transport 9-1-1 calls over great distances before they reach the point of interconnection with a 9-1-1 network services provider. However, the commission concludes that prorating cost recovery between ILECs and CLECs presents a more equitable arrangement whereby the two carriers may receive cost recovery in an amount rationally related to the transport costs incurred to reach the 9-1-1 selective router or tandem. In Docket Numbers 22920, *Application of Verizon Southwest to Revise the GTE Southwest, Inc. Emergency Number Service (E9-1-1) Tariff to comply with PUC Substantive Rules 26.433 and 26.207*, and 22954, *Notification of Southwestern Bell Telephone Company to introduce rates for Universal Emergency 9-1-1 (911) Service Pursuant to Substantive*

*Rule 26.433*, the commission notes that the proration methodology employed in ILEC-to-ILEC transactions could be employed in ILEC-to-CLEC cost recovery for dedicated transport.

The commission recognizes that since 1992, most ILECs have been charging a flat \$39 flat monthly fee for dedicated trunks, including port termination, to a 9-1-1 selective router or tandem. If two or more ILECs interconnect to transport 9-1-1 calls to a 9-1-1 selective router or tandem, the ILECs have prorated the total \$39 trunk fee, based on the transport mileage of their respective facilities. The commission concludes that ILEC-to-CLEC transaction should be treated similarly to establish uniform cost recovery for 9-1-1 dedicated transport.

The commission does not agree with commenters that claim CLECs must be required to invest as much in its network facilities as ILECs before they are entitled to parity in cost recovery. Such a view is not practical and can serve to discourage competitive entrants into the Texas telecommunications market. The commission recognizes that Public Utility Regulatory Act (PURA) §60.001 requires the commission to ensure that the rates and rules of an incumbent local exchange company are not unreasonably preferential, prejudicial, or discriminatory and are equitably and consistently applied. Consistent with this view, the commission notes that in allowing for relative parity in cost recovery, CLEC-to-ILEC dedicated transport transactions should be compensated in a like manner as ILEC-to-ILEC transactions.

The commission also recognizes the issue raised by Verizon in that the ILEC's have well defined exchange boundaries, unlike CLECs. The CLECs may have a limited number of switching facilities with a single point of interconnection requiring interconnection trunking facilities, which may extend for great distances and thus result in disproportionate pro rata share of the transport from CLECs. Accordingly, the commission finds that in calculating the pro rata share for CLECs, a distance limitation for interconnection should be established. The commission also notes that such limitation should be consistent with the commission's ruling in arbitration proceedings related to interconnection and reciprocal compensation.

The commission believes that cost recovery parity for ILECs and CLECs achieves the goal of minimizing the competition-related costs that 9-1-1 administrative entities must bear while achieving parity in cost recovery between CTUs.

***Preamble Issue Number 2:** Is there a more appropriate allocation method to apportion costs than the method proposed in (d)(1)? If so, what?*

SWBT and Verizon commented that subsection (d)(1) does not appear to apportion responsibility or contain an allocation methodology. Verizon also commented that the CTU should provision the dedicated facilities to the appropriate selective router in the most economical manner, and should recover its costs from the public safety answering point (PSAP) through its tariff or contract rates.

WCOM agreed with the allocation method proposed in subsection (d)(1) as long as the ILECs are not authorized to charge CLECs more than the charges in subsection (d)(1) for wholesale dedicated transport to the 9-1-1 selective routers. Furthermore, WCOM supported the allocation method as long as the commission also includes the language outlined in Preamble Issue Number Four. Verizon disagreed with WCOM because it believes that ILECs must be permitted to recover their costs, plus a reasonable profit, where they provide services or facilities to CLECs.

The CLEC Coalition did not object to placing a limit on cost recovery as long as all CTUs are treated in the same manner and 9-1-1 network services providers are not permitted to recover additional sums from the CLECs that are non-reimbursable. In addition, the CLEC Coalition stated that the language proposed in Preamble Issue Number Four would come very close to reaching the policy goal stated by the commission in the Supplemental Preliminary Order in Docket Numbers 22920 and 22954 calling for equal treatment for ILEC-to-CLEC dedicated transport transactions and ILEC-to-ILEC transactions. Consequently, under this view, CLECs and ILECs would each receive a portion of the capped rate of \$39 per trunk, based upon the mileage-based pro rata formula that has been used among ILECs since 1992.

The Texas 9-1-1 agencies commented that since the commission has rejected its allocation proposal in past rulings, it believes subsection (d)(1) is reasonable and in the public interest in that it compensates all CTUs equivalently for 9-1-1 dedicated trunks.

However, the Texas 9-1-1 agencies asserted that the more appropriate allocation method is for the costs of 9-1-1 dedicated trunks to be a cost of business to be borne by all CTUs.

The commission has previously ruled in Project Number 19203, *9-1-1 Rulemaking*, that CTUs should be allowed to recover dedicated-transport costs associated with the provision of 9-1-1 services. In Dockets Numbers 22920 and 22954, the commission indicated a strong preference that all CTUs adopt the policy currently implemented by ILECs, under which (1) the 9-1-1 administrative entity pays no more than \$39 for dedicated transport to selective router or tandem, and (2) the ILECs involved in such a connection prorate their shares of the \$39 tariffed rate.

The commission disagrees with Verizon and SWBT that subsection (d)(1) does not contain an allocation methodology. The commission finds that there exists no more appropriate allocation method, than the methods noted in subsection (d) of this rule, under the present circumstances. The commission determines that this allocation methodology is consistent with PURA §60.001, accomplishes the commission's interest in establishing parity in cost recovery for 9-1-1 dedicated transport between ILECs and CLECs and achieves the goal of minimizing the competition-related costs that can affect the established budgets of 9-1-1 administrative entities.

***Preamble Issue Number 3: Does the proposed rule adequately address CTUs' concerns regarding alleged discriminatory rates that are changed by the applicable 9-1-1 network***

*services provider, as defined in §26.433 of this title (relating to Roles and Responsibilities of 9-1-1 Service Providers)? Please explain fully.*

WCOM and Verizon agreed that the rule adequately addresses CTUs' concerns regarding alleged discriminatory rates that may be charged by the applicable 9-1-1 network services provider. However, WCOM stated that the proposed reimbursement structure could still be discriminatory if ILECs can charge wholesale charges for dedicated transport that exceed the charges that CLECs can recover under the proposed rule. In contrast, Verizon stated that an ILEC does not discriminate if the ILEC has a meet point arrangement with another ILEC but requires a CLEC to pay tariffed or negotiated rates for 9-1-1 dedicated transport.

The CLEC Coalition stated that the rule does not address CTUs' concerns about discriminatory rates. Specifically, the CLEC Coalition commented that a 9-1-1 network services provider could potentially subvert the rule's intention to limit cost recovery to actual cost or less by charging other ILECs the same "port termination" charges and other add-ons that increase 9-1-1 cost for all carriers while helping 9-1-1 network providers defray their own costs and even profit in the transaction. In addition, the CLEC Coalition requested the commission add language to make it clear that the pro rata sharing is to occur among all CTUs, not just among ILECs.

The commission finds that the proposed rule did not adequately address the CTU's concerns regarding alleged discriminatory rates that are charged by the 9-1-1 network

provider. The commission agrees with commentors that the proposed definition of "dedicated trunk" leaves open the possibility that CLECs could be subject to separate charges for port usage. In order to alleviate the possible discriminatory impacts created by the ambiguities related to the proposed definition for "dedicated trunking," the commission includes port usage, termination, and transport into the definition of a dedicated trunk. The commission finds these elements are integral parts of the dedicated trunk in the transport of 9-1-1 calls. Thus, the imposition of these supplemental charges allows for the realization of cost recovery parity from the funds received from the 9-1-1 entities for transport of 9-1-1 calls.

The commission understands that there are costs related to the provision of 9-1-1 service. In recognition of this concept, the commission believes that 9-1-1 network services providers should be permitted to recover some costs over and above the \$39 fee remitted to the CTUs for 9-1-1 dedicated transport. The commission rejects WCOM's position that it is discriminatory for ILECs to charge wholesale rates to CTUs for dedicated transport that exceed the charges that CTUs can recover from 9-1-1 entities. In so doing, the commission allows 9-1-1 network services providers to recover costs for 9-1-1 dedicated trunks provisioned to CTUs at total element long run incremental costs (TELRIC) rates that may exceed the charges that CTUs can recover from 9-1-1 entities. The commission finds this practice recognizes the 9-1-1 network services providers' concerns and is consistent with a fair return for the use of such facilities by the CTUs.

*Preamble Issue Number 4: If the proposed rule does not adequately address CTUs' concerns regarding alleged discriminatory rates, is the following language appropriate:*

*"A 9-1-1 network services provider as defined in §26.433(b) of this title (relating to Roles and Responsibilities of 9-1-1 Service Providers) that provides transmission facilities from the point of interconnection with a CTU to the 9-1-1 selective router shall charge the CTU an amount not to exceed the pro rata share of the amount the CTU is entitled to recover from the 9-1-1 entity under paragraph (1) of this subsection."*

SWBT commented that lowering SWBT's or other ILECs' lease rates for 9-1-1 transport facilities will have a negative impact on the revenue of all transport facility providers. SWBT opined that this action would serve only as a deterrent to carriers moving forward with further 9-1-1 technological research and investment. SWBT suggested that considerations of lowering leased 9-1-1 transport rates must include third party transport providers because many CLECs lease transport facilities from third parties other than SWBT.

Verizon commented that an ILEC does not discriminate if the ILEC has a meet point arrangement with another ILEC but requires a CLEC to pay tariffed or negotiated rates for 9-1-1 dedicated transport.

In contrast, AT&T, WCOM, and CLEC Coalition agreed on the adoption of this language. The CLEC Coalition remarked that, by adding this language to the rule, one would come very close to reaching the goal stated by the commission in the

Supplemental Preliminary Order in PUC Docket Numbers 22920 and 22954 whereby CLECs and ILECs would each receive a portion of the capped rate of \$39 per trunk, based upon the mileage-based pro rata formula that has been used among ILECs since 1992. In addition, AT&T and the CLEC Coalition asserted that additional language should be added to prevent network services providers from charging any kind of "port termination" charge for the privilege of terminating at the selective router.

The commission believes that subsection (d) of §26.435, as adopted, captures the intent of the cost limitation mechanisms inherent in the rule language proposed in Preamble Issue Question Number Four. Specifically, the commission finds subsection (d)(3), as adopted, allows for the inclusion of reasonable methodologies for ILEC and CLEC cost recovery for 9-1-1 dedicated transport in diverse network architecture for 9-1-1 delivery systems. However, the commission recognizes that in those situations where CTUs use ILEC provisioned 9-1-1 transport facilities to reach the 9-1-1 selective router or tandem, the cost may exceed the 9-1-1 administrative entity reimbursement. In such a case, the commission imposes, through this adopted rule, a requirement that the ILEC charge its costs for such transport facilities at TELRIC rates. This will reduce the additional costs paid by CTUs for the transport facilities and at the same time will provide the ILECs with compensation for the use of its network elements.

### ***Specific Subsections of the Rule***

#### *Subsection (a) Purpose*

There were no written comments regarding this subsection.

*Subsection (b) Application*

There were no written comments regarding this subsection.

*Subsection (c) Definitions*

*Subsection (c)(3) Dedicated Trunk*

Verizon and the CLEC Coalition found the proposed definition of dedicated trunk to be confusing. Verizon observed the use of undefined terms and confusing phrases in the definition of "dedicated trunk" in the proposed rule that might impose additional and substantive obligations.

The Texas 9-1-1 Agencies suggested adding the words "including port termination" to the definition because they do not reimburse ILECs for additional port connection charges.

*Commission response*

In response to the concerns raised by Verizon and the Texas 9-1-1 agencies, the commission has modified the language for this definition of "dedicated trunk" from the

proposed version of the rule. The commission modifies the definition of "dedicated trunk" by including transport, port usage, and termination as elements. This modification provides greater specificity in the definition of a "dedicated trunk" and answers the concerns of the CLECs that contended that the ILECs may be allowed to charge discriminatory rates for 9-1-1 dedicated transport by assessing additional charges for port usage, transport, and termination on these trunks. Consistent with the commission's view to establish uniform cost recovery for 9-1-1 dedicated transport between ILECs and CLECs, the commission determines that the aforementioned elements are integral parts of the 9-1-1 dedicated trunk and that any charges assessed to a CTU for the use of the dedicated trunk for 9-1-1 transport include port usage, transport, and termination as appropriate.

*Subsection (d) Reimbursable Costs*

All references to subsection (d) of §26.435 refer to the rule as adopted, unless otherwise noted.

*Subsection (d)(1)*

Verizon commented that this section is inappropriate because it establishes rates in a rulemaking and caps rates charged by CTUs that are not subject to incentive regulation.

The CLEC Coalition commented that the commission should not distinguish between a "trunk" and "transmission facilities" because this might allow 9-1-1 network services providers to charge discriminatory rates to CTUs.

SWBT commented that instead of merely capping PSAP payments, which it supports, the proposed rule inappropriately ignores state approved access tariff offerings and renders them ineffective.

The Texas 9-1-1 agencies commented that SWBT's and Verizon's rates for 9-1-1 dedicated trunks to 9-1-1 entities have already been established in prior commission cases and frozen by incentive regulation. The rates that Verizon or SWBT proposes to charge CLECs will be established in tariff dockets or negotiated interconnections agreements. Further, the commission does not sanction or approve CLEC proposed rates. In the proposed rule, the commission established what it considers to be the appropriate expectation as far as 9-1-1 entities obligation to "reimburse" CTUs for the 9-1-1 dedicated trunks.

*Commission response*

The commission disagrees with Verizon's contention that the reimbursable cost payments by the 9-1-1 entities are tantamount to the establishment of rates in a rulemaking and caps rates charged by CTUs that are not subject to incentive regulation. The commission agrees with the Texas 9-1-1 Agencies that it is not setting rates in this rule. Subsection

(d)(1) simply indicates the maximum costs for which a 9-1-1 entity can reimburse a CTU for the transport of a 9-1-1 call to the PSAP. Moreover, the commission concludes that, in the absence of specific statutory provisions regarding reimbursement of costs to CTUs for 9-1-1 dedicated transport, it is incumbent upon the commission, under its general regulatory authority under PURA §14.001 and after due consideration, to clarify reimbursement obligations of the 9-1-1 administrative entities for increased cost certainty. The commission agrees with the CLEC Coalition's view that this subsection should not create the appearance of a distinction between the terms "trunk" and "transmission facilities" in order to avoid the possible imposition of additional costs on the CTUs. The commission has addressed this concern by modifying its definition of a "dedicated trunk."

*Proposed subsection (d)(2)*

Proposed subsection (d)(2) was moved to adopted subsection (d)(4).

*Adopted subsections (d)(1)(A), (B), (C), and (d)(2)*

Home-Rule Cities requested the commission to delay the implementation of the rule to allow for them to budget for fiscal impacts. The Home-Rule Cities were concerned with the possibility that a CTU could obtain a different compensatory rate for 9-1-1 dedicated transport prior to the expiration of a city's fiscal year. This presented a problem, according to the Home-Rule Cities, as their budgets for reimbursing 9-1-1 dedicated

transport are set at the beginning of the upcoming fiscal year and based upon historical amounts generated by 9-1-1 fees charged to CTUs and passed through to end-use customers. Home-Rule Cities were concerned that if different compensatory rates were obtained by a CTU during the current fiscal year, they would be adversely affected since such new amounts were not included in the budgets for that current fiscal year. Home-Rule Cities proposed that the commission provide that requests for different rates, based upon the technology deployed by a CTU, be made annually by a date certain and that any changes in rates become effective on October 1 of each year, since that date would mark the beginning of the new fiscal period. In addition, the Texas 9-1-1 agencies commented that some clarity and certainty of 9-1-1 transport costs that will be applicable over a significant period is necessary to ensure that funding will be available.

AT&T and the CLEC Coalition disagreed with Home-Rule Cities' comments on delaying the implementation of the rule. The CLEC Coalition stated that Home-Rule Cities in the past have not set budgets to pay for CLECs' dedicated transport and have denied reimbursements to CLECs for 9-1-1 dedicated transport.

*Commission response*

The commission adds this language to the adopted version in response to the concerns of the Home-Rule Cities. The commission agrees with the Home-Rule Cities that city budgets could be adversely impacted in the event that a petitioning CTU receives an increase in the commission-approved reimbursable costs to be paid by 9-1-1 entities for

dedicated trunks, especially if it occurs during the current fiscal year. Under such a circumstance, a city may be paying reimbursement to a CTU for 9-1-1 dedicated trunks that was not factored into that fiscal year budget. The commission believes that subsections (d)(1)(A), (B), (C) and subsection (d)(2) provide cities with the opportunity for notice and comment on a petitioning CTU seeking approval from the commission for increased reimbursement for 9-1-1 dedicated transport. Moreover, the commission notes that these subsections allow cities to construct fiscal year budgets that are less subject to unforeseen increases before the end of the current fiscal year.

*Proposed subsection (d)(3)*

Proposed subsection (d)(3) was moved to adopted subsection (d)(5).

*Adopted subsection (d)(3)*

SWBT and Verizon objected to the notion of pro rata sharing of the \$39/trunk reimbursement. However, at the April 25, 2002 public hearing, SWBT proposed two options to allow for dedicated cost recovery. The first proposal allows for a pro rata sharing of the \$39 PSAP reimbursement. The CLEC is required to meet the 9-1-1 selective router or tandem at the Point of Interconnection (POI). The CLEC and ILEC shall prorate the \$39 revenue received from PSAP, based upon the transport mileage distance from the CLEC Point of Presence (POP) within each LATA to the POI, and from the POI to the 9-1-1 selective router or tandem. The second proposal allows the

CLEC to keep the entire \$39 PSAP reimbursement. The CLEC is required to deliver its 9-1-1 traffic directly to the 9-1-1 selective router or tandem. SWBT stated that if a CLEC chooses to lease SWBT facilities to reach the POI or to connect directly to the 9-1-1 selective router or tandem, it must pay SWBT access at the prevailing rate.

WCOM, AT&T, and W.T. Services generally agreed with the two proposals. WCOM and AT&T stated that POIs in existing interconnection agreements should be acceptable, unless parties involved agreed to different POIs. WCOM and AT&T commented that charges for ILEC provided transport should not exceed the \$39 charge that the 9-1-1 entities are required to pay to the CLEC.

*Commission response*

The commission added subsections (d)(3)(A)-(E), in recognition of its expressed policy goal in Docket Numbers 22920 and 22954 that CLEC-to-ILEC dedicated transport transactions be handled in the same way as ILEC-to-ILEC transactions. This view is also consistent with PURA §60.001 requiring nondiscriminatory behavior by ILECs. Historically, such transactions between ILECs have been handled with recovering a pro rata share of its costs based upon the dedicated transport mileage incurred by each ILEC in the delivery of the 9-1-1 call. The commission believes that applying that cost recovery methodology is applicable in CLEC-to-ILEC 9-1-1 dedicated transport. In its review and analysis of the parties' comments, the commission notes a variety of CLEC-to-ILEC network combinations that can be employed to transport a 9-1-1 call to the

PSAP. Each one of the network architectures has the potential for the CLEC to incur varying levels of cost for which the CTU could seek recovery.

In subsection (d)(3), the commission believes that the pro rata share to be allocated between the 9-1-1 network services provider and the CTU is to be based upon the 9-1-1 transport mileage incurred by the respective carrier in carrying the 9-1-1 call from the CTU end office or point of presence to the POI and the 9-1-1 network services provider's mileage from the POI to its 9-1-1 selective router or tandem. The commission notes that the pro rata share to be divided between the carriers for cost recovery for dedicated transport is based upon a 14 mile limit that generally defined the ILEC local calling scope. The commission employs this mileage limit based upon the ILEC-to-ILEC dedicated transport arrangement in place since 1992 for pro rata apportionment of costs. In that situation, each ILEC brought its transmission facilities to the boundaries of its local calling scope, which was commonly 14 miles, to its Exchange Area Boundary (EAB). The costs associated with 9-1-1 transport over this ILEC-to-ILEC arrangement resulted in a pro rata split of the recovered costs for the 9-1-1 transport. The commission believes that this methodology is applicable in the CLEC-to-ILEC model in achieving relative cost parity for this type of network arrangement involving transport on either side of a POI.

The commission notes that subsection (d)(3)(B) recognizes a methodology for cost recovery for 9-1-1 dedicated trunking owned or leased from a third party transport provider and provisioned by the CTU directly to the 9-1-1 network services provider's

selective router or tandem for delivery to the PSAP. In this situation, the commission expects that the 9-1-1 entity will pay the \$39 recurring rate to reimburse the CTU for 9-1-1 dedicated transport less costs of port usage and termination charges from the 9-1-1 network services provider. The commission acknowledges that the 9-1-1 network services provider has incurred port usage and termination costs at the 9-1-1 selective router or tandem. The commission concludes that those charges from the 9-1-1 network services provider should be TELRIC-based.

The commission notes that subsection (d)(3)(C) recognizes a methodology for cost recovery for 9-1-1 dedicated trunking provisioned by a 9-1-1 network services provider from a CTU's end office or point of presence directly to the 9-1-1 network services provider's selective router or tandem for delivery to the PSAP. In this situation, the commission expects that the 9-1-1 entity will pay the \$39 recurring rate to reimburse the CTU for 9-1-1 dedicated transport less costs of port usage, termination and transport charges from the 9-1-1 network services provider. The commission acknowledges that the 9-1-1 network services provider has incurred port usage, termination, and transport costs for the use of its dedicated trunk in the transport of the 9-1-1 call.

The commission notes that subsection (d)(3)(D) recognizes a methodology for cost recovery for 9-1-1 dedicated trunking provisioned by a 9-1-1 network services provider from a CTU's end office or point of presence to the point of interconnection for delivery to the PSAP. In this situation, the commission expects that the 9-1-1 entity will pay the \$39 recurring rate to reimburse the CTU for 9-1-1 dedicated transport less costs of port

usage, termination and transport charges from the 9-1-1 network services provider. The commission acknowledges that the 9-1-1 network services provider has incurred port usage, termination, and transport costs for the use of its dedicated trunk in the transport of the 9-1-1 call.

The commission determines that compensation for the use of the ILECs dedicated trunk facilities using TELRIC rates allows the 9-1-1 network services provider an amount above actual cost for the use of its facilities. The use of TELRIC-based methodology for the establishment of charges for the use of such facilities is validated by the United States Supreme Court holding in *Verizon Communications, Inc., et al v. FCC, No. 00-511, Decided May 13, 2002.*

*Proposed subsection (d)(4)*

Proposed subsection (d)(4) was moved to adopted subsection (d)(6).

*Adopted subsection (d)(4)*

Verizon proposed that trunking standards should be included in a 9-1-1 service agreement instead of a commission rule.

*Commission response*

The commission declines Verizon's suggestion that quality of service standards should not be included in a commission rule. It is important that CTUs are made aware of the standards of service for 9-1-1 dedicated transport that is expected in this state. Moreover, failure to comply with such standards in a commission rule could subject the violator to enforcement actions, making compliance by the CTU more likely. Such action by the commission could not be taken as readily, if quality of service standards were solely contained in 9-1-1 service agreements. The commission notes that subsection (d)(5) and (6) provide the 9-1-1 entity with the authority to obtain additional documentation in order to assure that the quality of service for the dedicated trunks is maintained.

*Proposed subsection (d)(5)*

Proposed subsection (d)(5) was moved to adopted subsection (d)(7).

*Adopted subsection (d)(5)*

There were no written comments regarding this subsection.

*Proposed subsection (d)(6)*

Proposed subsection (d)(6) was moved to adopted subsection (d)(8).

*Adopted subsection (d)(6)*

Home-Rule Cities pleaded for the commission to allow a 9-1-1 entity to request one traffic study (not performed by a CTU to prove the necessity for dedicated trunks in excess of the minimum number) at the CTUs expense. Verizon reported that its records indicate that only one city has requested a traffic study in recent years.

*Commission response*

The commission believes that the 9-1-1 entity should be provided with one traffic study or summary at no cost. CTUs are not often requested by the 9-1-1 entities to provide such studies and the commission concludes that an initial request for a traffic study would not be onerous to require compliance by the CTU. The commission notes that any additional traffic studies to evaluate current network performance requested by the 9-1-1 entity should result in a reasonable charge by the CTU pursuant to the approved tariff rate.

*Proposed subsection (d)(7)*

The CLEC Coalition commented that subsection (d)(7) intended to address such things as SWBT's practice of charging CLECs for T-1 circuits out of its (retail) access service tariff, rather than routinely permitting purchase of 9-1-1 trunks at unbundled network element (UNE) rates. The CLEC Coalition further commented that "actual costs" should

not include a "rate of return" or any other type of disguised profit for the network services provider.

Verizon stated that it does not believe subsection (d)(7) was intended to replace a CTU's tariff rates or prevent a CTU from recovering its cost of capital. Verizon proposed revisions to this section.

*Commission response*

The commission deletes proposed subsection (d)(7) and incorporates it into subsections (d)(3)(A) through (d)(3)(E). The commission believes that this is a more appropriate manner of dealing with the CTUs concerns over the rates charged by 9-1-1 network service providers for the leasing of its transmission facilities to transport a 9-1-1 call. The commission agrees with Verizon that a CTU should be able to recover its cost of capital. However, the commission believes that the cost should be consistent with the commission's overall goal of cost parity between CTUs for 9-1-1 dedicated transport. Thus, the commission states that where a CTU leases dedicated trunking from the 9-1-1 network service provider or provisions its own trunking to the 9-1-1 selective router or tandem, the 9-1-1 network service provider shall assess charges for the use of its facilities at TELRIC rates. This view is consistent with the US Supreme Court's holding in the *Verizon* case regarding the use of TELRIC rates in the leasing of ILEC networks by competing carriers.

*Adopted subsection (d)(7)*

There were no written comments regarding this subsection.

*Proposed subsection (d)(8)*

The CLEC Coalition commented that proposed subsection (d)(8) is a circuitous way to prevent 9-1-1 network services providers from profiting at CLECs' expense. The CLEC Coalition suggested that a better method would be to define trunking to include termination charges and to eliminate the distinction in (d)(7) that permits it to apply to the transmission portion of the 9-1-1 dedicated trunking path.

*Commission response*

The commission deletes proposed subsection (d)(8) and incorporates it into subsections (d)(3)(A)-(d)(3)(E). The commission believes that its redefinition of a "dedicated trunk" in subsection (c)(3) addresses the concerns about possible nondiscriminatory treatment of CTUs as well as the allocation methodologies promulgated in subsections (d)(3)(A)-(d)(3)(E). Such rule language is consistent with the policy goals expressed in previous Commission dockets and PURA.

*Adopted subsection (d)(8)*

There were no written comments regarding this subsection.

*Adopted Subsection (d)(9)*

TSTCI raised the issue of rural ILECs having trouble collecting "pass through charges" for selective routing services provided by 9-1-1 network services providers such as SWBT. The CLEC Coalition suggested that the non-discrimination provision of the proposed rule be supplemented to specify that the network services provider and the database services provider are not permitted to charge CTUs (1) for services that are not being provided, or (2) for services that are being charged to, or should be charged to, the 9-1-1 entity.

At the public hearing held on April 25, 2002, SWBT and Texas 9-1-1 Agencies agreed on additional language to be added to address TSTCI's concern.

*Commission response*

The commission notes that proposed subsection (d)(8) was deleted and this new subsection has been added. The commission agrees with the additional language added to this new subsection of the rule in order to facilitate the 9-1-1 network services providers recovery of "pass through charges." The commission believes that this will alleviate the concerns expressed by TSTCI.

*Subsection (e) Reimbursement prerequisites*

SWBT and Verizon objected to the prerequisites that a CTU must comply with to be reimbursed for dedicated transport. They are concerned that subsection (e) will place ILECs in the position of "policing" resellers.

The Texas 9-1-1 agencies commented that subsection (e) would enhance and promote better compliance by CTUs with their 9-1-1 quality of service obligations under state laws and commission rules. In addition, the Texas 9-1-1 agencies asserted that Verizon is not simply a "middleman" in reselling situations because even if a CLEC provides its information to 9-1-1 entities, it must still be compared with the ILECs information to get an accurate picture of CTU compliance with service quality requirements.

*Commission response*

The commission notes that SWBT and Verizon commented generally about this subsection with no comment directed at any specific part of the rule. The commission disagrees with SWBT's and Verizon's characterizations that this portion of the rule requires that they monitor and police reselling CTUs to ensure that they are remitting required 9-1-1 emergency service fees. By virtue of their contractual relationship with the reselling CTU, an ILEC is in a much better position to provide the 9-1-1 entities with documentation, in the event the reselling CTU's collection and remittance of 9-1-1 emergency service fees is not in compliance with applicable law. The commission feels

that the 9-1-1 entity is not in a position to adequately ensure that a reseller is paying 9-1-1 emergency service fees without the cooperation of the ILEC.

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 new section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2002) (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; and specifically, PURA §58.051 which requires PURA Chapter 58 electing companies to offer access for all residential and business end users to 9-1-1 service provided by a local authority and access to dual party relay service; §60.001 which requires the commission to ensure that the rates and rules of an incumbent local exchange company are not unreasonably preferential, prejudicial, or discriminatory and are equitably and consistently applied; §60.122 which grants the commission exclusive jurisdiction to determine rates and terms for interconnection for a holder of a certificate of convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority; and §60.124 which requires each telecommunications provider to maintain interoperable networks.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 58.051, 60.001, 60.122, and 60.124.

**§26.435. Cost Recovery Methods for 9-1-1 Dedicated Transport.**

- (a) **Purpose.** The purpose of this section is to establish uniform cost recovery methods for dedicated trunks used in the provision of 9-1-1 service to end users by certificated telecommunications utilities (CTUs).
- (b) **Application.** This section applies to all CTUs providing local exchange service.
- (c) **Definitions.** The following words and terms when used in this section shall have the following meaning unless the context indicates otherwise:
- (1) **9-1-1 entity** — A regional planning commission as defined in Texas Health & Safety Code Annotated §771.001(10) and an emergency communication district as defined in the Texas Health & Safety Code Annotated §771.001(3).
  - (2) **9-1-1 Service Agreement** — The contract addressing the 9-1-1 service arrangement(s) for the relevant local area that the 9-1-1 entity and the CTU shall negotiate and execute.
  - (3) **Dedicated trunk** — A 9-1-1 trunk that originates at a CTU switching office or point of presence to a port of termination at a 9-1-1 selective router or tandem, as described to the CTU by the applicable 9-1-1 entity in its service arrangement requirements for each applicable rate center. The dedicated trunk includes transport, port usage, and termination. Each

CTU shall be responsible for providing such dedicated trunks from the CTU switching office or point of presence to the 9-1-1 selective router.

- (4) **Service arrangement** — Each particular arrangement for 9-1-1 emergency service specified by the 9-1-1 entity for the relevant rate center(s) within its jurisdictional area.
- (d) **Reimbursable costs.**
- (1) **9-1-1/CTU Reimbursement.** Subject to the applicable law regarding payments by the 9-1-1 entity, the 9-1-1 entity shall reimburse a CTU a maximum non-recurring rate of \$165 and recurring rate of \$39 per month as the total compensation for each dedicated trunk unless:
- (A) the CTU files a petition with the commission and notice of such filing with the affected 9-1-1 entity or entities for the imposition of a different rate no later than June 1 of the calendar year; and
- (B) the CTU provides evidence to the commission that, based upon certain technology deployment, a different rate should apply; and
- (C) after appropriate review, including comment from the affected 9-1-1 entity or entities, the commission approves such rate as requested by the CTU.
- (2) Any commission approved change in rate for compensation for the dedicated trunk(s) shall become effective no earlier than October 1 of the same calendar year.

- (3) **Inter-CTU Allocation methodology.** Each CTU that originates a 9-1-1 call shall receive a pro rata share of the commission approved recurring rate(s) under paragraphs (1) or (2) of this subsection for 9-1-1 dedicated transport of the call, based upon the transport mileage between the CTU's end office or point of presence (POP) to the point of interconnection and the 9-1-1 network service provider's transport mileage from the point of interconnection to the 9-1-1 selective router or tandem. The transport mileage used to calculate the pro rata share shall not exceed 14 miles from the originating CTU end office or POP to the point of interconnection.
- (A) The points of interconnection for local traffic in existing interconnection agreements are acceptable for the purposes of calculating the pro rata share or reimbursable costs, unless the CTUs mutually agree to different points of interconnection.
- (B) To the extent a CTU provisions its own dedicated trunk(s) from its end office or POP directly to the 9-1-1 selective router or tandem of another 9-1-1 network services provider, the CTU is required to compensate such provider for port usage and termination charges. The 9-1-1 network services provider shall assess such charges on a Total Element Long Run Incremental Cost (TELRIC) basis.
- (C) To the extent a CTU leases dedicated trunk(s) from a 9-1-1 network services provider to the 9-1-1 selective router or tandem from its end office or POP, the CTU is required to compensate such provider for transport, port usage and termination charges.

The 9-1-1 network services provider shall assess such charges on a TELRIC basis.

- (D) To the extent a CTU leases dedicated trunk from a 9-1-1 network services provider extending from its end office or POP to the point of interconnection, the 9-1-1 network services provider shall assess such charges on a TELRIC basis.
  - (E) A CLEC may lease or provision dedicated trunks to the point of interconnection or directly to the 9-1-1 network services provider's 9-1-1 selective router or tandem.
- (4) The number of dedicated trunks needed for 9-1-1 purposes shall be determined by the CTU following industry standards to provide a grade of service of P.01 or greater, but the minimum number of dedicated trunks to each 9-1-1 selective router per service arrangement shall not be less than two.
  - (5) As a prerequisite to receiving compensation for more than the minimum number of dedicated trunks required to meet the P.01 grade of service, the CTU must provide to the 9-1-1 entity, at least 30 days prior to seeking additional compensation, copies of traffic studies, performed using measured call volumes on the individual trunk group, establishing that more than the minimum number of dedicated trunks required to meet the P.01 grade of service are necessary.
  - (6) The traffic study or summary provided in response to paragraph (5) of this subsection shall be provided to the 9-1-1 entity at no cost. Any other

traffic studies to evaluate current network performance will be provided to the 9-1-1 entity upon request, and the CTU shall be compensated by the 9-1-1 entity on a time and materials basis at rates that do not exceed the tariff rates approved as reasonable by the commission for the dominant CTU in the rate center.

- (7) Only the CTU originating the dedicated trunk from the switching office or point of presence to the 9-1-1 selective router can submit charges to the 9-1-1 entity for the maximum reimbursement required in paragraph (1) of this subsection.
- (8) Where the same dedicated trunks are permitted by the relevant service arrangements to serve areas administered by multiple 9-1-1 entities, a CTU shall contact the 9-1-1 entity serving the largest number of access lines for the area served by the CTU with those dedicated trunks and there shall be a rebuttable presumption that the 9-1-1 entity serving the largest number of access lines is the appropriate 9-1-1 entity to receive the billings for these dedicated trunks. The 9-1-1 entity that is responsible for receiving the billings for dedicated trunks pursuant to this subsection, may seek reimbursement of such expense from other 9-1-1 entities within the affected rate center.
- (9) The 9-1-1 network services provider as defined in §26.433(b) of this title (relating to Roles and Responsibilities of 9-1-1 Service Providers) shall bill the 9-1-1 entity and shall not bill a CTU for Automatic Local Identification (ALI) and/or selective routing services.

(e) **Reimbursement prerequisites.** A CTU must comply with each of the following prerequisites before the CTU can obtain reimbursement from the 9-1-1 entity for dedicated trunks:

(1) Before the CTU initiates the provision of local exchange service in those areas in which the 9-1-1 entity provides 9-1-1 service, the CTU shall execute the 9-1-1 Service Agreement.

(2) The CTU shall provide verification to the applicable 9-1-1 entity that it is complying with all requirements of §26.433 of this title, including, but not limited to, §26.433(e)(2) of this title, requiring "a designated contact person to be available at all times to work with the applicable" 9-1-1 entity.

(3) A CTU that resells its local exchange service to any CTU that, in turn, provides the resold local exchange service to end users, shall demonstrate to the 9-1-1 entity that the CTU has provided initial notice to its reselling CTUs:

(A) that it does not remit the required 9-1-1 emergency service fees on behalf of reselling CTUs; and

(B) that, subject to a confidentiality agreement with the 9-1-1 entity, it will release reselling CTUs wholesale billing records to 9-1-1 entities for quality measurement purposes, including, but not limited to, auditing a reselling CTU's collection and remittance of 9-1-1 emergency service fees in accordance with applicable law.

- (4) A CTU that provides resold local exchange service to end users must execute a separate service agreement with each 9-1-1 entity and remit the required 9-1-1 emergency service fee to the 9-1-1 entity pursuant to such service agreement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt. It is therefore ordered by the Public Utility Commission of Texas that §26.435 relating to Cost Recovery Methods for 9-1-1 Dedicated Transport is hereby adopted with changes to the rule as proposed.

**ISSUED IN AUSTIN, TEXAS ON THE 30th DAY OF JULY 2002.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**Chairman Rebecca Klein**

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**Commissioner Brett A. Perlman**