

PROJECT NO. 25433

RULEMAKING TO ADDRESS	§	PUBLIC UTILITY COMMISSION
MUNICIPAL AUTHORIZED	§	
REVIEW OF ACCESS LINE	§	OF TEXAS
REPORTING	§	
	§	

PROPOSAL FOR PUBLICATION OF AN AMENDMENT TO §26.467 AND NEW §26.469 AS APPROVED AT THE SEPTEMBER 12, 2002 OPEN MEETING

The Public Utility Commission of Texas (commission) proposes an amendment to §26.467, relating to Rates, Allocation, Compensation, Adjustments and Reporting, and new §26.469, relating to Municipal Authorized Review of a Certificated Telecommunication Provider's Business Records. The proposed new rule and amendment will define the authorized review of a provider's business records by a municipality pursuant to Texas Local Government Code §283.056(c)(3), clarify some of the procedures related to the quarterly reporting of municipal access lines, and consolidate the reporting requirements into one section. Project Number 25433 is assigned to this proceeding.

Hayden Childs, Senior Policy Analyst, Telecommunications Division, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications as a result of enforcing or administering the section for state government, but there will be some fiscal implications for local government, insomuch as local governments will have the costs of pursuing an authorized review of a provider's business records and the benefits of potentially discovering misreported access lines and the subsequent compensation due.

Hayden Childs has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing new §26.469 will be the ability of the municipality to conduct an authorized review to ensure that providers are complying with the reporting requirements of Texas Local Government Code, Chapter 283, whereas the public benefit anticipated as a result of enforcing the amendment to §26.467 will be to clarify some of the procedures related to the quarterly reporting of municipal access lines and to consolidate the reporting requirements into one section. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these sections. There is some anticipated economic cost to persons who are required to comply with the sections as proposed, but the public benefit of enabling municipalities to conduct statutorily allowed authorized reviews should outweigh those costs.

Hayden Childs has also determined that for each year of the first five years the proposed sections are in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

The commission staff will conduct a public hearing on this rulemaking under the Administrative Procedure Act, Texas Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin,

Texas 78701, in the Commissioner's Hearing Room on Wednesday, December 4, 2002 immediately following the public hearing for Project Number 26412, *Rulemaking to Amend P.U.C. Substantive Rule 26.465*.

Comments on the proposed new section and amendment (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Reply comments may be submitted within 45 days after publication. All comments should be submitted electronically at the same time. Comments should be organized in a manner consistent with the organization of the proposed rule and amendment. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 25433.

This new section and amendment are proposed 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. This new section and amendment are also proposed under the Texas Local Government Code, §283.056(c)(3) and §283.058, which grant the commission the jurisdiction over municipalities and certificated telecommunications providers necessary to enforce the

whole of Chapter 283 and to ensure that all other legal requirements are enforced in a competitively neutral, non-discriminatory, and reasonable manner.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and Texas Local Government Code §283.056 and §283.058.

§26.467. Rates, Allocation, Compensation, Adjustments and Reporting.

(a) (No change.)

(b) **Application.** The provisions of this section apply to certificated telecommunication providers (CTPs) and municipalities in the State of Texas, unless specified otherwise in this section.

(c) - (j) (No change.)

(k) **CTP implementation of commission-established rates.** The requirements listed in this subsection shall apply to all CTPs in the State of Texas, except those exempted pursuant to §26.465 of this title.

(1) Interim compensation. CTPs shall continue to compensate municipalities at the rates required under the terms of the expired or terminated agreements or ordinances until the CTP implements the commission-established ~~commission-established initial and/or updated~~ rates. A CTP not subject to an existing franchise agreement or ordinance that wants to construct facilities to offer telecommunications services in the municipality shall pay fees that are competitively neutral and non-discriminatory, consistent with the charges of the most recent agreement or ordinance between the municipality and the CTP serving the largest number of access lines within

the municipality until the right-of-way fees established by the commission take effect.

~~(2)(1)~~ **Development of billing systems.** ~~A CTP~~ No later than June 1, 2000, CTPs shall complete the development of billing systems necessary to implement access line rates, by category, as established by the commission.

~~(2)~~ **Initial quarterly compensation and reporting.**

~~(A)~~ **Implementation.** ~~CTPs may apply the commission established initial and updated rates (as applicable) to access lines in a municipality for the second calendar quarter of 2000 (the months of April, May and June).~~

~~(B)~~ **Quarterly access line count report.** ~~No later than August 15, 2000, CTPs that implemented commission established rates pursuant to subparagraph (A) of this paragraph shall file the first quarterly access line count report with the commission. The report shall include a count of the number of access lines, by category, by municipality, at the end of each month of the preceding quarter (April, May and June) that the CTP implemented commission established rates. The quarterly report shall exclude lines that are leased or resold to other CTPs unless an intercarrier agreement has been reached pursuant to subsection (1) of this section. The CTP shall include with the report a certified statement from an authorized officer or duly authorized representative of the CTP certifying that the information contained in~~

~~the report is true and correct to the best of the officer's or representative's knowledge and belief after inquiry. On request and subject to the confidentiality protections of the Local Government Code, §283.005, each CTP shall provide each affected municipality with a copy of the report required by this subsection.~~

~~(C) Compensation. No later than August 15, 2000, CTPs that applied commission established rates pursuant to subparagraph (A) of this paragraph shall pay municipalities, compensation for the preceding quarter at that rate. The municipal compensation shall be the amount equal to the rate per category of access line multiplied by the monthly access line count reported pursuant to subparagraph (B) of this paragraph.~~

~~(D) True up. Where a municipality is compensated under the terms of an expired franchise contract, agreement or ordinance for the period between March 1, 2000 and June 30, 2000, no true up to the commission established rates will be allowed for that period.~~

- (3) **Quarterly** ~~Subsequent quarterly~~ **compensation and reporting.** All CTPs shall implement commission-established rates for each quarter. Unless otherwise specified, periodic reporting shall be consistent with this subsection and §26.465 of this title. ~~All CTPs shall implement commission-established initial and updated rates (as applicable) no later than July 1, 2000, and revised rates (as applicable) for the subsequent quarters.~~

- (A) **Quarterly access line count report.** ~~No later than November 15, 2000, a CTP shall file a quarterly access line count report for the preceding calendar quarter with the commission. All subsequent quarterly access line count reports shall be due no later than 45 days from the end of the preceding calendar quarter. The quarterly access line count report shall include a count of the number of access lines, by category, by municipality, for the end of each month of the preceding quarter. The report shall exclude lines that are resold or leased to other CTPs unless an intercarrier agreement has been reached pursuant to subsection (l) of this section. The CTP shall include with the report a certified statement from an authorized officer or duly authorized representative of the CTP certifying that the information contained in the report is true and correct to the best of the officer's or representative's knowledge and belief after inquiry. On request and subject to the confidentiality protections of the Local Government Code, §283.005, each CTP shall provide each affected municipality with a copy of the report required by this subsection.~~
- (i) No later than 45 days from the end of the preceding calendar quarter, a CTP shall file a quarterly access line count report for the preceding calendar quarter with the commission.

- (ii) The quarterly access line count report shall include a count of the number of access lines, by category, by municipality, for the end of each month of the preceding quarter.
- (iii) The report shall exclude lines that are resold, leased or otherwise provided to other CTPs unless the CTP is reporting for an affiliate pursuant to subsection (l) of this section.
- (iv) The CTP shall include with the report a certified statement from an authorized officer or duly authorized representative of the CTP certifying that the information contained in the report is true and correct to the best of the officer's or representative's knowledge and belief after reasonable inquiry.
- (v) The CTP shall respond to any request for additional information from the commission within 30 days from receipt of the request.
- (vi) Reports required under this subsection may be used by the commission only to verify the number of access lines that serve customer premises within a municipality.
- (vii) On request and subject to the confidentiality protections of the Local Government Code, §283.005, each CTP shall provide each affected municipality with a copy of the report required by this subsection.

(B) Compensation.

(i) All Beginning July 1, 2000, CTPs shall apply the most recent commission-established rates to access ~~lines~~line in a municipality.

(ii) The municipal compensation shall be an amount equal to the rate per category of access line multiplied by the number of access lines in that category in that municipality at the end of each month in a calendar quarter as reflected in reports filed pursuant to subparagraph (A) of this paragraph. ~~All CTPs shall pay to municipalities the compensation for the third calendar quarter of 2000, no later than November 15, 2000.~~

(iii) All payments for ~~subsequent~~ calendar quarters shall be made no later than 45 days from the end of that quarter.

(4) Reconciliation report. ~~If the CTP deducts or includes a direct write-off pursuant to subsection (m)(2) of this section, the CTP must include a reconciliation report with its compensation to each affected municipality. This reconciliation report does not need to be filed with the commission. The reconciliation report must include a monthly delineation of: **Waiver of reporting requirements.** A CTP that has reached an intercarrier agreement pursuant to subsection (l) of this section shall be relieved of the quarterly access line count reporting requirements until the expiration of that agreement.~~

(A) the amount deducted from total payment due to direct write-offs; and

(B) the amount added to the total payment due to previously uncollectible direct write-offs.

(5) Report of reselling CTP by underlying CTPs. On request of a municipality, a CTP that owns facilities in the rights-of-way of municipalities (an underlying CTP) shall report the identities of the CTPs to whom it resold, leased or otherwise provided access lines that extend to the end-use customer's premises (reselling CTPs) within each exchange that lies wholly or partially within a municipality's boundaries. This report does not need to be filed with the commission.

(6) Adequate proof of reporting and compensation responsibilities.

(A) To ensure that each CTP only reports and compensates municipalities for those lines that it uses to serve end-use customers, an underlying CTP shall obtain adequate proof that the reselling CTP will directly report any leased or resold access lines and remit the related payments to municipalities.

(B) Adequate proof shall consist of a written agreement separate from any other agreement that cites the Texas Local Government Code, Chapter 283, and the reporting and compensation requirements of this section. The written agreement shall include the names of the municipalities to which the reseller will directly report access lines.

(C) If the underlying CTP fails to obtain adequate proof that the reselling CTP will include the access line in its monthly count and remit

payment on those access lines to the municipality, the underlying CTP must include such lines in its monthly count of access lines and remit a right-of-way fee to the municipality.

~~(l) **Reporting and compensation on behalf of another CTP.** Notwithstanding any other subsection, a CTP may report and compensate a municipality on behalf of another CTP subject to the following terms.~~

~~(1) All CTPs are responsible for reporting to the commission their own quarterly access line count report and compensating each municipality pursuant to subsection (k) of this section.~~

~~(2) CTPs that own facilities in the rights-of-way of municipalities shall directly compensate each municipality quarterly, based upon a monthly access line count. The compensation shall be the amount equal to the rate per category of access line multiplied by the number of access lines in that category in that municipality, at the end of each month, for the preceding quarter.~~

~~(3) CTPs that do not own facilities in the rights-of-way of municipalities have the option of compensating the municipality through the underlying CTP, so long as the reselling CTP and the underlying CTP have reached a written agreement.~~

~~(4) An underlying CTP and a reselling CTP may reach an agreement that the underlying CTP shall file the quarterly access line count report in each municipality, by category, on behalf of the reselling CTP, and also~~

~~compensate the municipality for those lines. The quarterly access line count report may be filed with the commission on an aggregated basis.~~

~~(5) A CTP may file access line counts in each municipality for itself and its affiliates that are CTPs on an aggregated basis.~~

~~(6) A CTP that reports on behalf of another CTP shall, on request from the commission or a municipality, provide a disaggregated line count for each CTP included in the report filed pursuant to subsection (k) of this section.~~

~~(7) No later than 45 days after entering into an agreement to provide joint access line counts and municipal compensation pursuant to paragraphs (4) and (5) of this subsection, a CTP that reports and compensates municipalities on behalf of another CTP shall identify in a report filed with the commission, the CTPs on whose behalf access line counts will be reported to the commission.~~

~~(8) Nothing in this section shall prevent a CTP from charging to another CTP a reasonable administrative fee for reporting and compensating a municipality on behalf of another CTP to which it has resold, leased, or otherwise provided access lines.~~

~~(9) Nothing in this section shifts the liability from a reselling CTP for non-payment of municipal compensation and failure to report pursuant to this section~~

(l) Alternate reporting and compensation arrangements. Notwithstanding any other subsection, a CTP shall be subject to the following terms when making alternate reporting and compensation arrangements.

(1) Designated reporting party. A CTP may reach a written agreement separate from any other agreement, including the adequate proof agreement, to have a designated reporting party fulfill the reporting and compensation requirements of this section on its behalf. If the CTP is a reselling CTP, the designated reporting party may be the underlying CTP.

(A) If such an agreement is reached, the designated reporting party shall file the quarterly access line count report in each municipality, by category, on behalf of the CTP, and also compensate the municipality for those lines.

(B) The designated reporting party shall file the quarterly access line count report for each municipality, by category, with the commission on a disaggregated basis by CTP.

(C) Nothing in this subsection shall prevent a designated reporting party from charging a reasonable administrative fee for reporting and compensating a municipality on behalf of a CTP.

(D) Nothing in this subsection shifts the liability from a CTP, reselling or otherwise, for non-payment of municipal compensation and failure to report pursuant to this section.

(2) **Affiliates.** A CTP may file access line counts in each municipality for itself and its affiliates that are CTPs on an aggregated basis. If the CTP files access line counts for itself and its CTP affiliates on an aggregated basis, the CTP shall include a list of the affiliates and their certification numbers in its Reconciliation Report to the municipalities pursuant to subsection (k) of this section.

(m) **Pass-through.** A CTP recovering its municipal compensation from its customers within the boundaries of a municipality shall not recover a total amount greater than the sum of the amounts derived from the multiplication of access line rates by the number of lines, per category, for that municipality. Pass-through of the commission's rates established under this chapter shall be considered to be a pro rata charge to customers.

(1) (No change.)

(2) A CTP shall be allowed to deduct from its current payment any amounts that are direct write-offs as a result of its collection efforts. Any amounts subsequently recovered from the customer after the direct write-offs shall be included in the amounts payable to each affected municipality ~~the cities~~ in the month(s) received. There shall be no reduction in payment for any estimated uncollectible allowances reported for financial purposes by the CTP.

(3) (No change.)

(n) (No change.)

§26.469. Municipal Authorized Review of a Certificated Telecommunication

Provider's Business Records.

(a) Purpose. This section establishes uniform guidelines for a municipal authorized review of a certified telecommunications provider's (CTP's) access line reports, pursuant to Texas Local Government Code, Chapter 283.

(b) Application. This section applies to all municipalities and CTPs in the State of Texas, insofar as the municipality collects fees for use of the public right-of-way pursuant to Texas Local Government Code, Chapter 283, and insofar as the CTP is not fully exempt per §26.468 of this title (relating to Procedures for Standardized Access Line Reports and Enforcement Relating to Quarterly Reporting).

(c) Definitions. The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise:

(1) Commission filings — All filings with the commission by CTPs and municipalities which would reasonably provide information to verify access

line reports, subject to the confidentiality provisions of subsection (g) of this section.

(2) **Business records** — All CTP business records, its agents and independent contractors of the CTP, to the extent such records would reasonably provide information to assist in the verification of the accuracy of access line fee reports and access line fee payments to municipalities by CTPs.

(3) **Authorized review** — Inspection by one or more municipalities of a CTP's relevant business records, including any third-party compliance reports and workpapers, to ensure compliance with access line reporting requirements of Texas Local Government Code, Chapter 283.

(d) **Relevant business records.** A municipality may review a provider's business records to the extent necessary to ensure compliance with the access line reporting requirements in §26.467 of this title (relating to Rates, Allocation, Compensation, Adjustments and Reporting). The CTP shall provide prompt and reasonable access to such records at a location within the State of Texas, or at a mutually agreeable site of the parties. Relevant business records include the following:

(1) a current listing of all company product codes and associated access lines category;

(2) procedures of classification of services and identification of categories of access lines;

- (3) street addresses and corresponding tax codes; and
- (4) procedures and documentation for assessing uncollectibles.
- (e) **Sampling.** Supplemental to the authorized review of a CTP's business records, a municipality or aggregation of municipalities may request sampling data to support the documentation. A CTP must provide a statistically significant sample of data, including statewide customer records with any sensitive information obscured.
- (f) **Authorized review.** The authorized review may be conducted by a municipality or its designated agents. Multiple municipalities undertaking an authorized review of a commission filing by the same CTP must form a joint review committee. Commission staff may serve as a mediator to clarify the concern(s) and assure that a reasonable response is provided by the CTP.
- (1) **Notice of intent.** If a municipality determines to undertake an authorized review, it shall commence such review under this subsection by giving a written Notice of Intent (NOI) to each CTP subject to the authorized review. A NOI is deemed made upon receipt or three days after deposited in U.S. mail. The NOI shall advise the CTP of the concerns that the municipality wants the CTP to address. Such notice shall be given to the CTP within 90 days after the filing with the commission of a CTP's report of access lines to which the concern(s) apply.

- (2) **Notice of aggregation.** Within ten days after the 90-day deadline for NOIs, a CTP shall send a written Notice of Aggregation (NOA) to all the municipalities that requested an authorized review of a particular filing. If only one municipality files a NOI with the CTP, the requirements of this paragraph are not applicable. The NOA shall include:
- (A) the contact information for all of the other municipalities that requested an authorized review for the same filing;
 - (B) the CTP's designated contact person for the authorized review, including the contact person's telephone number, email, address and fax number;
 - (C) the location of the relevant business records; and
 - (D) a list of the principal individuals assisting the municipality in obtaining and explaining the relevant CTP business records.
- (3) **Joint Review Committee proposal.** Within 30 days after the deadline for the NOA, all of the municipalities that filed a NOI for any particular CTP shall form a joint review committee consisting of representatives or delegated agents of each municipality. The joint review committee shall file a proposal with the CTP specifying the audit program. If only one municipality files a NOI with the CTP, the requirements of this paragraph are not applicable.
- (4) **Preliminary review.** The CTP and the municipality or Joint Review Committee may hold a preliminary meeting where the CTP shall discuss

their processes and procedures in identifying customers within a jurisdiction, determination of access lines, reporting to the commission, and compensation of municipalities. This meeting will allow the CTP and municipality or joint review committee to review the audit program and provide input in determining the extent of the review. This preliminary review must be completed within a reasonable time to allow the authorized review process to meet the deadline pursuant to paragraph (5) of this subsection. Failure to maintain a reasonable time frame may lead to enforcement action by the commission for one or both parties.

(5) **Deadline.** The authorized review of the relevant CTP business records under this subsection must be completed within 90 days from the joint review committee proposal if multiple municipalities are involved, or within 90 days of the NOI if only one municipality is involved. Any sampling data must be provided by the CTP to the municipality or joint review committee within 90 days after the completion of the authorized review of the relevant CTP business records. Any mutually agreeable extensions to this deadline or any other aspect of the timeline are allowed.

(6) **Notification to commission staff.** If an authorized review committee should uncover evidence of reporting errors, the committee must notify commission staff within a reasonable amount of time but no later than 90 days after the completion of the authorized review or submission of the sampling data, whichever comes later.

(g) Proprietary or confidential information.

- (1) All information presented by a CTP for inspection, as part of an authorized review, is deemed confidential and proprietary upon request by the CTP. The confidentiality provisions of §26.465 of this title (relating to Methodology for Counting Access Lines and Reporting Requirements for Certificated Telecommunications Providers) shall apply.
- (2) CTPs may require reasonable confidentiality agreements to be executed by a municipality and its representatives prior to review of confidential and proprietary information or work papers of the third-party independent auditor.

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

**ISSUED IN AUSTIN, TEXAS ON THE 16th DAY OF SEPTEMBER 2002 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**