

PROJECT NO. 41609

RULEMAKING TO AMEND	§	PUBLIC UTILITY COMMISSION
SUBSTANTIVE RULES RELATING	§	
TO TELECOMMUNICATIONS TO	§	OF TEXAS
CONFORM TO 2013	§	
LEGISLATION	§	

ORDER ADOPTING AMENDMENTS TO

§§26.5, 26.22, 26.23, 26.25, 26.27, 26.28, 26.30, 26.31, 26.34, 26.51, 26.52, 26.53, 26.73, 26.79, 26.80, 26.85, 26.89, 26.123, 26.128, 26.133, 26.142, 26.143, 26.211, 26.225, 26.226, 26.227, 26.228, 26.229, 26.230, 26.272, 26.311, 26.313, 26.317, 26.319, 26.321, 26.342, 26.406, 26.417, 26.418, 26.420, 26.421, 26.422, 26.423, AND THE REPEAL OF 26.431 AS APPROVED AT THE MARCH 6, 2014 OPEN MEETING

The Public Utility Commission of Texas (commission) adopts amendments to §§26.5, 26.22, 26.23, 26.25, 26.27, 26.28, 26.30, 26.31, 26.34, 26.51, 26.79, 26.80, 26.85, 26.89, 26.123, 26.128, 26.133, 26.142, 26.143, 26.211, 26.272, 26.311, 26.313, 26.317, 26.319, 26.321, 26.342, 26.417, 26.418, 26.421, 26.422, 26.423 with changes to the proposed text as published in the November 29, 2013, issue of the *Texas Register* (38 TexReg 8532) and adopts amendments to §§26.52, 26.53, 26.73, 26.225, 26.226, 26.227, 26.228, 26.229, 26.230, 26.406, 26.420, and the repeal of 26.431, without changes to the proposed text as published in the November 29, 2013, issue of the *Texas Register* (38 TexReg 8532). The amendments amend commission substantive rules relating to telecommunications service to conform to 2013 legislation, which includes Senate Bills 259, 512, 583, and 809 of the 83rd Legislature, Regular Session (Telecom Legislation). Project Number 41609 is assigned to this proceeding.

The commission received comments on the proposed amendments from the Office of Public Utility Counsel (OPUC), Southwestern Bell Telephone Company d/b/a AT&T Texas (AT&T), Sprint Communications L.P., tw telecom of Texas, llc, and the Texas Cable

Association (Joint Commenters), Verizon (GTE Southwest Incorporated d/b/a Verizon Southwest, Verizon Enterprise Solutions LLC, Verizon Long Distance LLC, MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services and MCI Communications Services, Inc. d/b/a Verizon Business Services), and TEXALTEL.

ISSUES APPLICABLE TO MULTIPLE RULE SECTIONS

(1) Definition of “Exempt Carrier”

Joint Commenters proposed a definition of “Exempt Carrier” be added to §26.5 and proposed that the defined term be used in place of the undefined term “qualified nondominant telecommunications utility” in several rules: §§26.22, 26.23, 26.25, 26.27, 26.28, 26.31, 26.34, 26.51, 26.79, 26.80, 26.85, 26.123, 26.128, 26.133, 26.143, 26.211, 26.272, 26.311, 26.313, 26.317 26.319, 26.321, 26.342, 26.418, 26.421, 26.422 and 26.423.

Joint Commenters also proposed the term “exempt carrier” be added to Substantive Rule §26.30. In its reply comments, AT&T did not oppose Joint Commenters’ proposal. Verizon, in its reply, did not oppose defining the term “exempt carrier,” but proposed slightly different wording. TEXALTEL on reply also proposed its own definition of “exempt carrier.”

Commission response

The commission agrees with Joint Commenters that the term “Exempt Carrier” should be defined and used in place of the commission’s proposed language. The commission adopts wording that strikes a balance between the various definitions as

proposed and adds clarity to its rules. Sections 26.5, 26.22, 26.23, 26.25, 26.27, 26.28, 26.30, 26.31, 26.34, 26.51, 26.79, 26.80, 26.85, 26.123, 26.128, 26.133, 26.143, 26.211, 26.272, 26.311, 26.313, 26.317, 26.319, 26.321, 26.342, 26.418, 26.421, 26.422 and 26.423 are revised accordingly.

(2) Addition of “nonbasic”

Joint Commenters suggested that “nonbasic” be added before “services of an electing company” in §§26.51, 26.52, 26.225, 26.226, and 26.227, in order to track the language in PURA §58.156, which provides that §§55.001-004 do not apply to retail nonbasic services offered by an electing company.

AT&T disagreed with Joint Commenters and argued that the proposed amendments rely on the relief provided by PURA §58.156 as well as the deregulatory effect of PURA §58.052(a)(2)(E)(ii).

Verizon also opposed Joint Commenters’ suggested addition. Verizon pointed out that §§55.001-004 also do not apply to *basic* services of an electing company. Verizon stated that because these sections do not apply to the basic *and* nonbasic retail services of an electing company, the proposed insertion of “nonbasic” should not be adopted.

Commission response

The commission does not agree that the addition of the word “nonbasic” is necessary to comply with the amendments to PURA. The commission adopts the rule language as proposed.

ISSUES APPLICABLE TO INDIVIDUAL RULE SECTIONS*Section 26.30*

Joint Commenters opposed the commission’s proposed revision for two reasons: (1) as proposed it failed to implement PURA §52.154 because it limits commission authority over deregulated Incumbent Local Exchange Carriers (ILECs) but it does not limit commission authority over Competitive Local Exchange Carriers (CLECs) operating in their territories; and (2) it was unnecessary. Joint Commenters further expressed concern that jurisdictional matters could be determined in informal complaints by non-attorneys not familiar with the scope of the commission’s jurisdiction under PURA §65.102.

In its reply, AT&T agreed with Joint Commenters as to the first rationale, but not the second. AT&T stated SB 259 reflected the Legislature’s intent to confine the commission’s jurisdiction on specific activities of deregulated companies (the “enforceable provisions list” in PURA §65.102(b)). AT&T further stated PURA §65.102(d) then provided that the commission’s complaint jurisdiction is limited to those same activities. As to Joint Commenters’ jurisdictional concern, AT&T stated that since both informal and formal complaints are permissible only where the commission has jurisdiction over the subject

matter of the complaint, informal complaints will continue to exist, and in most cases required, as provided in §22.242(c). AT&T opined that §26.30 incorporated the language and intent of PURA §65.102(d) and should be adopted with the modifications previously discussed to reflect the relief provided by PURA §52.154.

In its reply, Verizon supported adoption of the commission proposed amendment to the rule.

Commission response

The commission agrees with Joint Commenters that “exempt carriers” should be added to the rule, but otherwise adopts the rule as proposed.

Section 26.51

Joint Commenters opposed the commission’s proposed amendment to the rule because they said the requirement to maintain a reliable network will continue to apply to deregulated ILECs as part of their wholesale and interconnection obligations retained under PURA §65.102(b).

AT&T explained in its reply that it has just one public switched telephone network, but that the exemption of deregulated exchanges or companies from the retail quality of service standards and some network reporting does not diminish the obligations that wholesale providers have to their carrier customers under the Federal Telecommunications Act of 1996 (FTA 96), interconnection agreements or PURA. AT&T argued that the obligation under the FTA 96 that requires a wholesale carrier to provide requesting telecommunications

carriers with just, reasonable and nondiscriminatory access to specific aspects of its network, only requires that the wholesale carrier provide the same reliable network the wholesale carrier uses to provide services to its own customers. Accordingly, AT&T opined that a CLEC is not entitled to higher quality service than a carrier's own retail customers and that the proposed rules should be approved without further modification.

Verizon concurred with the commission's proposal for publication. It said PURA §§55.001-55.004 did not apply to deregulated companies and did not apply to retail services of a chapter 58 electing company or to the retail nonbasic services of a transitioning company and thus did not agree with the Joint commenters assertion that §26.51 should apply to the aforementioned types of companies.

Commission response

The commission agrees with AT&T and Verizon and adopts the rule amendments as proposed.

Section 26.52

Joint Commenters opposed the rule amendments, which provided that these sections did not apply to the retail services of an electing company or to the retail nonbasic services offered by a transitioning company, because they say the amendments will add ambiguity. They question if the requirements of the two rules can be segregated between basic and nonbasic retail services.

In its reply, Verizon disagreed with the Joint Commenters position. Verizon concurred with the commission's proposed amendment clarifying that the rules did not apply to retail services of an electing company and the retail nonbasic services offered by a transitioning company and are authorized by PURA §§55.001 and 55.002.

AT&T reply comments for §26.51 also apply to these rule amendments.

Commission response

The commission agrees with AT&T and Verizon and adopts the rule amendments as proposed.

Section 26.89

Joint Commenters suggested the rule title be changed to "Nondominant Carriers' Obligations Regarding Information on Rates and Services," to better reflect the proposed amended language that addresses nondominant carriers' obligations. Verizon did not oppose the Joint Commenters' suggestion.

Commission response

The commission agrees with Joint Commenters and revises the rule title to read "Nondominant Carriers' Obligations Regarding Information on Rates and Services."

Section 26.272

Joint Commenters opposed the commission amendment that added paragraph (E), which provided that subsection (i)(2) (Requirements for CTUs ceasing operations) and (i)(3) (Requirements for service installations) of the rule did not apply to deregulated companies holding a COA or to qualified nondominant telecommunications utilities.

AT&T replied that the amendments reflect the legislature's intent to exempt deregulated companies from retail quality of service standards. AT&T further explained that the proposed language reflects a conforming change made to §26.54 and that changes to Chapter 26 network rules do not diminish wholesale obligations under the Federal Telecommunications Act of 1996 (FTA 96), interconnection agreements or Chapter 60. AT&T stated that Staff's proposed amendment should be approved. AT&T also replied that, since the source of the notification requirement in subsection (i)(2) is PURA §54.253, and since that provision is not in the enforceable provisions list, the commission amendment is consistent with the intent of the legislature.

Verizon concurred with the commission's proposal that these sections did not apply to a deregulated company holding COA or to qualified nondominant telecommunications utility. Verizon said Joint commenters failed to cite any authority for continuing to apply §26.272(i)(2) to deregulated companies. Verizon also argued that the dominant certificated telecommunications utility (DCTU) provisions of §26.272(i)(3) do not apply to deregulated companies because, by definition, a deregulated company holding a COA is not a DCTU.

Verizon also stated that the nondominant certificated telecommunications utility (NCTU) retail service objectives in §26.272(i)(3) may not be applied to deregulated companies because: (1) PURA §65.102(a)(2) provides that deregulated companies are not subject to retail service standards; and (2) PURA §54.104(a) and §§55.001-55.004, which authorize retail service objectives, did not apply to deregulated companies. Joint Commenters cited PURA §60.124 and §60.203 which concern general interconnection obligations that do not authorize retail service standards.

Commission response

The amendments to PURA change the commission's authority with respect to the retail services of deregulated companies. Federal requirements governing the ILECs' wholesale obligations remain in effect. The commission agrees with AT&T and Verizon and adopts the rule amendments as proposed.

All comments, including any not specifically referenced herein, were fully considered by the commission.

The amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2013) (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 the amendments to PURA made by Senate Bills 259, 512, 583, and 809 of the 83rd Legislature, Regular Session.

Cross Reference to Statutes: PURA §14.002 and the amendments to PURA made by Senate Bills 259, 512, 583, and 809 of the 83rd Legislature, Regular Session.

§26.5. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context indicates otherwise:

- (1) **Access customer** -- Any user of access services which are obtained from a certificated telecommunications utility (CTU).
- (2) **Access services** -- CTU services which provide connections for or are related to the origination or termination of intrastate telecommunications services that are generally, but not limited to, interexchange services.
- (3) **Administrative review** -- A process under which an application may be approved without a formal hearing.
- (4) **Affected person** --
 - (A) a public utility affected by an action of a regulatory authority;
 - (B) a person whose utility service or rates are affected by a proceeding before a regulatory authority; or
 - (C) a person who:
 - (i) is a competitor of a public utility with respect to a service performed by the utility; or
 - (ii) wants to enter into competition with a public utility.
- (5) **Affiliate** --
 - (A) a person who directly or indirectly owns or holds at least 5.0% of the voting securities of a public utility;
 - (B) a person in a chain of successive ownership of at least 5.0% of the voting securities of a public utility;

- (C) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by a public utility;
 - (D) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by:
 - (i) a person who directly or indirectly owns or controls at least 5.0% of the voting securities of a public utility; or
 - (ii) a person in a chain of successive ownership of at least 5.0% of the voting securities of a public utility;
 - (E) a person who is an officer or director of a public utility or of a corporation in a chain of successive ownership of at least 5.0% of the voting securities of a public utility; or
 - (F) a person determined to be an affiliate under Public Utility Regulatory Act §11.006.
- (6) **Aggregate customer proprietary network information (CPNI)** -- A configuration of customer proprietary network information that has been collected by a telecommunications utility and organized such that none of the information will identify an individual customer.
- (7) **Alternate 9-1-1 routing** -- The routing of 9-1-1 calls to a designated alternate location if all dedicated 9-1-1 trunks to a primary public safety answering point are busy or out of service.
- (8) **Assumed name** -- Has the meaning assigned by Texas Business and Commerce Code, §36.10.

- (9) **Automatic dial announcing device (ADAD)** -- Any automated equipment used for telephone solicitation or collection that:
- (A) is capable of storing numbers to be called, or has a random or sequential number generator capable of producing numbers to be called; and
 - (B) alone or in conjunction with other equipment, can convey a prerecorded or synthesized voice message to the number called without the use of a live operator.
- (10) **Automatic location identification (ALI)** -- The automatic display at a public safety answering point of a caller's telephone number, the address/location of the telephone number, and supplementary emergency services information for the location from which a call originates.
- (11) **Automatic number identification (ANI)** -- The telephone number associated with an access line, connection, or station from which a call originates that is automatically transmitted by the local switching system to an interexchange or other communications carrier or to the operator of a 9-1-1 system.
- (12) **Base rate area** -- A specific area within an exchange area, as set forth in the dominant certificated telecommunications utilities' tariffs, maps or descriptions, wherein local exchange service is furnished at uniform rates without extra mileage charges.
- (13) **Basic local telecommunications service** -- Flat rate residential and business local exchange telephone service, including primary directory listings; tone dialing service; access to operator services; access to directory assistance services; access to 911 service where provided by a local authority or dual party relay service; the

ability to report service problems seven days a week; lifeline services; and any other service the commission, after a hearing, determines should be included in basic local telecommunications service.

- (14) **Basic network services (BNS)** -- Those services identified in Public Utility Regulatory Act §58.051.
- (15) **Baud** -- Unit of signaling speed reflecting the number of discrete conditions or signal elements transmitted per second.
- (16) **Bellcore** -- Bell Communications Research, Inc.
- (17) **Billing agent** -- Any entity that submits charges to a billing telecommunications utility on behalf of itself or any service provider.
- (18) **Billing telecommunications utility** -- Any telecommunications provider, as defined in the Public Utility Regulatory Act §51.002 that issues a bill directly to a customer for any telecommunications product or service.
- (19) **Bit Error Ratio (BER)** -- The ratio of the number of bits received in error to the total number of bits transmitted in a given time interval.
- (20) **Bit Rate** -- The rate at which data bits are transmitted over a communications path, normally expressed in bits per second.
- (21) **Bona fide request** -- A written request to an incumbent local exchange company (ILEC) from a CTU or an enhanced service provider, requesting that the ILEC unbundle its network/services to the extent ordered by the Federal Communications Commission. A bona fide request indicates an intent to purchase the service subject to the purchaser being able to obtain acceptable rates, terms, and conditions.

- (22) **Business service** -- A telecommunications service provided a customer where the use is primarily of a business, professional, institutional or otherwise occupational nature.
- (23) **Busy hour** -- The clock hour each day during which the greatest usage occurs.
- (24) **Busy season** -- That period of the year during which the greatest volume of traffic is handled in a switching office.
- (25) **Call aggregator** -- Any person or entity that owns or otherwise controls telephones intended to be utilized by the public, which control is evidenced by the authority to post notices on and/or unblock access at the telephone.
- (26) **Call splashing** -- Call transferring (whether caller-requested or operator service provider-initiated) that results in a call being rated and/or billed from a point different from that where the call originated.
- (27) **Call transferring** -- Handing off a call from one operator service provider (OSP) to another OSP.
- (28) **Caller identification materials (caller ID materials)** -- Any advertisements, educational materials, training materials, audio and video marketing devices, and any information disseminated about caller ID services.
- (29) **Caller identification service (caller ID service)** -- A service offered by a telecommunications provider that provides calling party information to a device capable of displaying the information.
- (30) **Calling area** -- The area within which telecommunications service is furnished to customers under a specific schedule of exchange rates. A "local" calling area may include more than one exchange area.

- (31) **Calling party information** --
- (A) the telephone listing number and/or name of the customer from whose telephone instrument a telephone number is dialed; or
 - (B) other information that may be used to identify the specific originating number or originating location of a wire or electronic communication transmitted by a telephone instrument.
- (32) **Capitalization** -- Long-term debt plus total equity.
- (33) **Carrier of choice** -- An option that allows an individual to choose an interexchange carrier for long distance calls made through Telecommunications Relay Service.
- (34) **Carrier-initiated change** -- A change in the telecommunications utility serving a customer that was initiated by the telecommunications utility to which the customer is changed, whether the switch is made because a customer did or did not respond to direct mail solicitation, telemarketing, or other actions initiated by the carrier.
- (35) **Central office** -- A switching unit in a telecommunications system which provides service to the general public, having the necessary equipment and operating arrangements for terminating and interconnecting customer lines and trunks or trunks only.
- (36) **Census block group (CBG)** -- A United States Census Bureau geographic designation that generally contains between 250 and 550 housing units.
- (37) **Certificated service area** -- The geographic area within which a company has been authorized to provide basic local telecommunications services pursuant to a certificate of convenience and necessity (CCN), a certificate of operating authority

(COA), or a service provider certificate of operating authority (SPCOA) issued by the commission.

- (38) **Certificated telecommunications utility** -- A telecommunications utility that has been granted either a CCN, a COA, or a SPCOA.
- (39) **Class of service or customer class** -- A description of utility service provided to a customer which denotes such characteristics as nature of use (business or residential) or type of rate (flat rate or message rate). Classes may be further subdivided into grades, denoting individual or multiparty line or denoting quality of service.
- (40) **Commercial mobile radio service (CMRS)** --
- (A) As defined in 47 C.F.R. §20.3, a mobile service that is:
- (i) provided for profit with, i.e., the intent of receiving compensation or monetary gain;
 - (ii) an interconnected service; and
 - (iii) available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public; or
- (B) the functional equivalent of such a mobile service described in subparagraph (A) of this paragraph.
- (41) **Commission** -- The Public Utility Commission of Texas.
- (42) **Commission on State Emergency Communications (CSEC)** -- The state commission with the responsibilities and authority as specified in Texas Health and Safety Code, Chapter 771.
- (43) **Competitive exchange service** -- Any of the following services, when provided on an inter- or intrastate basis within an exchange area: central office based PBX-type

services for systems of 75 stations or more; billing and collection services; high speed private line services of 1.544 megabits or greater; customized services; private line and virtual private line services; resold or shared local exchange telephone services if permitted by tariff; dark fiber services; non-voice data transmission service when offered as a separate service and not as a component of basic local telecommunications service; dedicated or virtually dedicated access services; services for which a local exchange company has been granted authority to engage in pricing flexibility pursuant to §26.211 of this title (relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges); any service initially provided within an exchange after October 26, 1992, if first provided by an entity other than the incumbent local exchange company (companies) certificated to provide service within that exchange; and any other service the commission declares is not local exchange telephone service.

- (44) **Competitive services (CS)** -- Those services as defined in Public Utility Regulatory Act §58.151, and any other service the commission subsequently categorizes as a competitive service.
- (45) **Completed call** -- A call that is answered by the called party.
- (46) **Complex service** -- The provision of a circuit requiring special treatment, special equipment, or special engineering design, including but not limited to private lines, WATS, PBX trunks, rotary lines, and special assemblies.

- (47) **Consumer good or service** --
- (A) Real property or tangible or intangible personal property that is normally used for personal, family, or household purposes, including personal property intended to be attached to or installed in any real property;
 - (B) A cemetery lot;
 - (C) A time-share estate; or
 - (D) A service related to real or personal property.
- (48) **Consumer telephone call** -- An unsolicited call made to a residential telephone number to:
- (A) solicit a sale of a consumer good or service;
 - (B) solicit an extension of credit for a consumer good or service; or
 - (C) obtain information that will or may be used to directly solicit a sale of a consumer good or service or to extend credit for the sale.
- (49) **Cooperative** -- An incumbent local exchange company that is a cooperative corporation.
- (50) **Cooperative corporation** --
- (A) An electric cooperative corporation organized and operating under the Electric Cooperative Corporation Act, Texas Utilities Code Annotated, Chapter 161, or a predecessor statute to Chapter 161 and operating under that chapter; or
 - (B) A telephone cooperative corporation organized under the Telephone Cooperative Act, Texas Utilities Code, Chapter 162, or a predecessor statute to Chapter 162 and operating under that chapter.

- (51) **Corporate name** -- Has the meaning assigned by Texas Business Corporation Act, Article §2.05.
- (52) **Corporation** -- A domestic or foreign corporation, joint-stock company, or association, and each lessee, assignee, trustee, receiver or other successor in interest of the corporation, company, or association, that has any of the powers or privileges of a corporation not possessed by an individual or partnership. The term does not include a municipal corporation, except as expressly provided by the Public Utility Regulatory Act.
- (53) **Custom calling-type services** -- Call management services available from a central office switching system including, but not limited to, call forwarding, call waiting, caller ID, or automatic recall.
- (54) **Customer access line** -- A unit of measurement representing a telecommunications circuit or, in the case of ISDN, a telecommunications channel designated for a particular customer. One customer access line shall be counted for each circuit which is capable of generating usage on the line side of the switched network or a private line circuit, regardless of the quantity or ownership of customer premises equipment connected to each circuit. In the case of multiparty lines, each party shall be counted as a separate customer access line.
- (55) **Customer-initiated change** -- A change in the telecommunications utility serving a customer that is initiated by the customer and is not the result of direct mail solicitation, telemarketing, or other actions initiated by the carrier.
- (56) **Customer premises equipment (CPE)** -- Telephone terminal equipment located at a customer's premises. This does not include overvoltage protection equipment,

inside wiring, coin-operated (or pay) telephones, “company-official” equipment, mobile telephone equipment, “911” equipment, equipment necessary for provision of communications for national defense, or multiplexing equipment used to deliver multiple channels to the customer.

- (57) **Customer proprietary network information (CPNI), customer-specific** -- Any information compiled about a customer by a telecommunications utility in the normal course of providing telephone service that identifies the customer by matching such information with the customer’s name, address, or billing telephone number. This information includes, but is not limited to: line type(s), technical characteristics (*e.g.*, rotary service), class of service, current telephone charges, long distance billing record, local service billing record, directory assistance charges, usage data, and calling patterns.
- (58) **Customer trouble report** -- Any oral or written report from a customer or user of telecommunications service received by any telecommunications utility relating to a physical defect, difficulty, or dissatisfaction with the service provided by the telecommunications utility’s facilities. Each telephone or PBX switchboard position reported in trouble shall be counted as a separate report when several items are reported by one customer at the same time, unless the group of troubles so reported is clearly related to a common cause.
- (59) **dBrn** -- A unit used to express noise power relative to one Pico watt (-90 dBm).
- (60) **dBrnC** -- Noise power in dBrn, measured with C-message weighting.
- (61) **dBrnCO** -- Noise power in dBrnC referred to or measured at a zero transmission level point.

- (62) **D-Channel** -- The integrated-services-digital-network out-of-band signaling channel.
- (63) **Dedicated signaling transport** -- Transmission of out-of-band signaling information between an access customer's common channel signaling network and a CTU's signaling transport point on facilities dedicated to the use of a single customer.
- (64) **Dedicated 9-1-1 trunk** -- Refers to either:
- (A) a single purpose telephone circuit, or Internet Protocol (IP) equivalent, that originates at a CTU's (CTU's) switching office or point of presence and connects to a port of termination at an E9-1-1 selective router, 9-1-1 tandem, IP-based 9-1-1 system, or next generation 9-1-1 system, as described to the CTU by the appropriate 9-1-1 administrative entity or entities in its 9-1-1 service arrangement requirements for each applicable rate center (direct dedicated 9-1-1 trunk); or
 - (B) any other single purpose telephone circuit, or IP equivalent, that is used by a CTU to provide 9-1-1 service consistent with the 9-1-1 administrative entity's or entities' 9-1-1 service arrangement requirements that does not connect directly to a port of termination as described in subparagraph (A) of this paragraph (indirect dedicated 9-1-1 trunk). A direct dedicated 9-1-1 trunk includes transport, port usage, and termination.
- (65) **Default routing** -- The capability to route a 9-1-1 call to a designated public safety answering point when the incoming 9-1-1 call cannot be selectively routed due to an automatic number identification failure or other cause.
- (66) **Depreciation expenses** -- The charges based on the depreciation accrual rates designed to spread the cost recovery of the property over its economic life.

- (67) **Deregulated company** -- An incumbent local exchange company (ILEC) for which all of the company's markets have been deregulated.
- (68) **Direct-trunked transport** -- Transmission of traffic between the serving wire center and another CTU's office, without intermediate switching. It is charged on a flat-rate basis.
- (69) **Disconnection of telephone service** -- The event after which a customer's telephone number is deleted from the central office switch and databases.
- (70) **Discretionary services (DS)** -- Those services as defined in the Public Utility Regulatory Act §58.101, and any other service the commission subsequently categorizes as a discretionary service.
- (71) **Distance learning** -- Instruction, learning, and training that is transmitted from one site to one or more sites by telecommunications services that are used by an educational institution predominantly for such instruction, learning, or training-- including: video, data, voice, and electronic information.
- (72) **Distribution lines** -- Those lines from which the end user may be provided direct service.
- (73) **Dominant carrier** -- A provider of a communication service provided wholly or partly over a telephone system who the commission determines has sufficient market power in a telecommunications market to control prices for that service in that market in a manner adverse to the public interest. The term includes a provider who provided local exchange telephone service within certificated exchange areas on September 1, 1995, as to that service and as to any other service for which a

competitive alternative is not available in a particular geographic market. In addition with respect to:

- (A) intraLATA long distance message telecommunications service originated by dialing the access code “1-plus,” the term includes a provider of local exchange telephone service in a certificated exchange area for whom the use of that access code for the origination of “1-plus” intraLATA calls in the exchange area is exclusive; and
 - (B) interexchange services, the term does not include an interexchange carrier that is not a certificated local exchange company.
- (74) **Dominant certificated telecommunications utility (DCTU)** -- A CTU that is also a dominant carrier. Unless clearly indicated otherwise, the rules applicable to a DCTU apply specifically to only those services for which the DCTU is dominant.
- (75) **Dual-party relay service** -- A service using oral and printed translations, by either a person or an automated device, between hearing- or speech-impaired individuals who use telecommunications devices for the deaf, computers, or similar automated devices, and others who do not have such equipment.
- (76) **Educational institution** -- Accredited primary or secondary schools owned or operated by state and local government entities or by private entities; institutions of higher education as defined by the Texas Education Code, §61.003(13); the Texas Education Agency, its successors and assigns; regional education service centers established and operated pursuant to the Texas Education Code, Chapter 8; and the Texas Higher Education Coordinating Board, its successors and assigns.

- (77) **Electing local exchange company (LEC)** -- A CTU electing to be regulated under the terms of the Public Utility Regulatory Act, Chapter 58.
- (78) **Electric utility** -- Except as provided in Chapter 25, Subchapter I, Division 1 of this title (relating to Open- Access Comparable Transmission Service for Electrical Utilities in the Electric Reliability Council of Texas), an electric utility is: A person or river authority that owns or operates for compensation in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electricity in this state. The term includes a lessee, trustee, or receiver of an electric utility and a recreational vehicle park owner who does not comply with Texas Utilities Code, Chapter 184, Subchapter C, with regard to the metered sale of electricity at the recreational vehicle park. The term does not include:
- (A) a municipal corporation;
 - (B) a qualifying facility;
 - (C) a power generation company;
 - (D) an exempt wholesale generator;
 - (E) a power marketer;
 - (F) a corporation described by Public Utility Regulatory Act §32.053 to the extent the corporation sells electricity exclusively at wholesale and not to the ultimate consumer;
 - (G) an electric cooperative;
 - (H) a retail electric provider;
 - (I) the state of Texas or an agency of the state; or
 - (J) a person not otherwise an electric utility who:

- (i) furnishes an electric service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others;
 - (ii) owns or operates in this state equipment or facilities to produce, generate, transmit, distribute, sell or furnish electric energy to an electric utility, if the equipment or facilities are used primarily to produce and generate electric energy for consumption by that person;
or
 - (iii) owns or operates in this state a recreational vehicle park that provides metered electric service in accordance with Texas Utilities Code, Chapter 184, Subchapter C.
- (79) **Element** -- Unbundled network elements, including: interconnection, physical-collocation, and virtual-collocation elements.
- (80) **Eligible telecommunications provider (ETP) service area** -- The geographic area, determined by the commission, containing high cost rural areas which are eligible for Texas Universal Service Funds support under §26.403 or §26.404 of this title (relating to Texas High Cost Universal Service Plan (THCUSP) and Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan).
- (81) **Embedded customer premises equipment** -- All customer premises equipment owned by a telecommunications utility, including inventory, which was tariffed or subject to the separations process of January 1, 1983.
- (82) **Emergency service number (ESN)** -- A three to five digit number representing a unique combination of emergency service agencies designated to serve a specific

range of addresses within a particular geographic area. The ESN facilitates any required selective routing and selective transfer to the appropriate public safety answering point and the dispatching of the proper service agencies.

- (83) **Emergency service zone (ESZ)** -- A geographic area that has common law enforcement, fire, and emergency medical services personnel that respond to 9-1-1 calls.
- (84) **End user choice** -- A system that allows the automatic routing of interexchange, operator-assisted calls to the billed party's chosen carrier without the use of access codes.
- (85) **Enhanced service provider** -- A company that offers computer-based services over transmission facilities to provide the customer with value-added telephone services.
- (86) **Entrance facilities** -- The transmission path between the access customer's (such as an interexchange carrier) point of demarcation and the serving wire center.
- (87) **Equal access** -- Access which is equal in type, quality and price to Feature Group C, and which has unbundled rates. From an end user's perspective, equal access is characterized by the availability of "1-plus" dialing with the end user's carrier of choice.
- (88) **Exchange area** -- The geographic territory delineated as an exchange area by official commission boundary maps. An exchange area usually embraces a city or town and its environs. There is usually a uniform set of charges for telecommunications service within the exchange area. An exchange area may be served by more than one central office and/or one certificated telephone utility. An exchange area may also be referred to as an exchange.

- (89) Exempt Carrier -- A nondominant telecommunications utility that satisfies any of the criteria of PURA § 52.154.
- (90) Expenses -- Costs incurred in the provision of services that are expensed, rather than capitalized, in accordance with the Uniform System of Accounts applicable to the carrier.
- (91) Experimental service -- A new service that is proposed to be offered on a temporary basis for a specified period not to exceed one year from the date the service is first provided to any customer.
- (92) Extended area service (EAS) -- A telephone switching and trunking arrangement which provides for optional calling service by DCTUs within a local access and transport area and between two contiguous exchanges or between an exchange and a contiguous metropolitan exchange local calling area. For purposes of this definition, a metropolitan exchange local calling area shall include all exchanges having local or mandatory EAS calling throughout all portions of any of the following exchanges: Austin metropolitan exchange, Corpus Christi metropolitan exchange, Dallas metropolitan exchange, Fort Worth metropolitan exchange, Houston metropolitan exchange, San Antonio metropolitan exchange, or Waco metropolitan exchange. EAS is provided at rate increments in addition to local exchange rates, rather than at toll message charges.
- (93) Extended local calling service (ELCS) -- Service provided pursuant to §26.219 and §26.221 of this title (relating to Administration of Expanded Local Calling Requests; and Applications to Establish or Increase Expanded Local Calling Service Surcharges).

- (94) E911 or E9-1-1 -- 9-1-1 service that is capable of providing automatic number identification, automatic location identification, selective routing, and selective transfer.
- (95) Facilities -- All the plant and equipment of a public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any public utility, including any construction work in progress allowed by the commission.
- (96) Facilities-based provider -- A telecommunications provider that provides telecommunications services using facilities that it owns or leases or a combination of facilities that it owns and leases, including unbundled network elements.
- (97) Foreign exchange (FX) -- Exchange service furnished by means of a circuit connecting a customer's station to a primary serving office of another exchange.
- (98) Foreign serving office (FSO) -- Exchange service furnished by means of a circuit connecting a customer's station to a serving office of the same exchange but outside of the serving office area in which the station is located.
- (99) Forward-looking common costs -- Economic costs efficiently incurred in providing a group of elements or services that cannot be attributed directly to individual elements or services.
- (100) Forward-looking economic cost -- The sum of the total element long-run incremental cost of an element and a reasonable allocation of its forward-looking common costs.
- (101) Forward-looking economic cost per unit -- The forward-looking economic cost of the element as defined in this section, divided by a reasonable projection of the sum of

the total number of units of the element that the DCTU is likely to provide to requesting telecommunications carriers and the total number of units of the element that the DCTU is likely to use in offering its own services, during a reasonable time period.

- (102) Geographic scope -- The geographic area in which the holder of a COA or of a SPCOA is authorized to provide service.
- (103) Grade of service -- The number of customers a line is designated to serve.
- (104) Health Center -- A federally qualified health center service delivery site.
- (105) Hearing -- Any proceeding at which evidence is taken on the merits of the matters at issue, not including prehearing conferences.
- (106) Hearing carryover -- A technology that allows an individual who is speech-impaired to hear the other party in a telephone conversation and to use specialized telecommunications devices to send communications through the telecommunications relay service operator.
- (107) High cost area -- A geographic area for which the costs established using a forward-looking economic cost methodology exceed the benchmark levels established by the commission.
- (108) High cost assistance (HCA) -- A program administered by the commission in accordance with the provisions of §26.403 of this title.
- (109) Identity -- The name, address, telephone number, and/or facsimile number of a person, whether natural, partnership, municipal corporation, cooperative corporation, corporation, association, governmental subdivision, or state agency and the relationship of the person to the entity being represented.

- (110) Impulse noise -- Any momentary occurrence of the noise on a channel significantly exceeding the normal noise peaks. It is evaluated by counting the number of occurrences that exceed a threshold. This noise degrades voice and data transmission.
- (111) Incumbent local exchange company (ILEC) -- A local exchange company that had a CCN on September 1, 1995.
- (112) Informational notice - Notice that is filed in connection with nonbasic services, new service offerings, and pricing and packaging flexibility if required by Public Utility Regulatory Act Chapters 52, 58, or 59.
- (113) Information sharing program -- Instruction, learning, and training that is transmitted from one site to one or more sites by telecommunications services that are used by a library predominantly for such instruction, learning, or training, including video, data, voice, and electronic information.
- (114) Integrated services digital network (ISDN) -- A digital network architecture that provides a wide variety of communications services, a standard set of user-network messages, and integrated access to the network. Access methods to the ISDN are the Basic Rate Interface (BRI) and the Primary Rate Interface (PRI).
- (115) Interactive multimedia communications -- Real-time, two-way, interactive voice, video, and data communications conducted over networks that link geographically dispersed locations. This definition includes interactive communications within or between buildings on the same campus or library site.
- (116) Intercept service -- A service arrangement provided by the local exchange carrier whereby calls placed to a disconnected or discontinued telephone number are

intercepted and the calling party is informed by an operator or by a recording that the called telephone number has been disconnected, discontinued, changed to another number, or otherwise is not in service.

- (117) Interconnection -- Generally means: The point in a network where a customer's transmission facilities interface with the dominant carrier's network under the provisions of this section. More particularly it means: The termination of local traffic including basic telecommunications service as delineated in §26.403 of this title or integrated services digital network (ISDN) as defined in this section and/or EAS/ELCS traffic of a CTU using the local access lines of another CTU, as described in §26.272(d)(4)(A) of this title (relating to Interconnection). Interconnection shall include non-discriminatory access to signaling systems, databases, facilities and information as required to ensure interoperability of networks and efficient, timely provision of services to customers without permitting access to network proprietary information or customer proprietary network information, as defined in this section, unless otherwise permitted in §26.272 of this title.
- (118) Interconnector -- A customer that interfaces with the dominant carrier's network under the provisions of §26.271 of this title (relating to Expanded Interconnection).
- (119) Interexchange carrier (IXC) -- A carrier providing any means of transporting intrastate telecommunications messages between local exchanges, but not solely within local exchanges, in the State of Texas. The term may include a CTU or CTU affiliate to the extent that it is providing such service. An entity is not an IXC solely because of:

- (A) the furnishing, or furnishing and maintenance of a private system;
 - (B) the manufacture, distribution, installation, or maintenance of customer premises equipment;
 - (C) the provision of services authorized under the FCC's Public Mobile Radio Service and Rural Radio Service rules; or
 - (D) the provision of shared tenant service.
- (120) Internet Protocol (IP) -- A data communication protocol used in communicating data from one computer to another on the Internet or other networks.
- (121) Internet Protocol enabled service -- a service, capability, functionality, or application that uses Internet Protocol or a successor protocol to allow an end user to send or receive a data, video, or voice communication in Internet Protocol or a successor protocol.
- (122) Interoffice trunks -- Those communications circuits which connect central offices.
- (123) IntraLATA equal access -- The ability of a caller to complete a toll call in a local access and transport area (LATA) using his or her provider of choice by dialing "1" or "0" plus an area code and telephone number.
- (124) Intrastate -- Refers to communications which both originate and terminate within Texas state boundaries.
- (125) Least cost technology -- The technology or mix of technologies that would be chosen in the long run as the most economically efficient choice. The choice of least cost technologies, however, shall:
- (A) be restricted to technologies that are currently available on the market and for which vendor prices can be obtained;

- (B) be consistent with the level of output necessary to satisfy current demand levels for all services using the basic network function in question; and
 - (C) be consistent with overall network design and topology requirements.
- (126) License -- The whole or part of any commission permit, certificate, approval, registration, or similar form of permission required by law.
- (127) Licensing -- The commission process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.
- (128) Lifeline Service -- A program certified by the Federal Communications Commission to provide for the reduction or waiver of the federal subscriber line charge for residential consumers.
- (129) Line -- A circuit or channel extending from a central office to the customer's location to provide telecommunications service. One line may serve one customer, or all customers served by a multiparty line.
- (130) Local access and transport area (LATA) -- A geographic area established for the provision and administration of communications service. It encompasses one or more designated exchanges, which are grouped to serve common social, economic and other purposes. For purposes of these rules, market areas, as used and defined in the Modified Final Judgment and the GTE Final Judgment, are encompassed in the term local access and transport area.
- (131) Local call -- A call within the certificated telephone utility's toll-free calling area including calls which are made toll-free through a mandatory EAS or expanded local calling (ELC) proceeding.

- (132) Local calling area -- The area within which telecommunications service is furnished to customers under a specific schedule of exchange rates. A local calling area may include more than one exchange area.
- (133) Local exchange carrier (LEC) -- A telecommunications utility that has been granted either a certificate of convenience and necessity or a COA to provide local exchange telephone service, basic local telecommunications service, or switched access service within the state. A local exchange company is also referred to as a local exchange carrier.
- (134) Local exchange telephone service or local exchange service -- A telecommunications service provided within an exchange to establish connections between customer premises within the exchange, including connections between a customer premises and a long distance provider serving the exchange. The term includes tone dialing service, service connection charges, and directory assistance services offered in connection with basic local telecommunications service and interconnection with other service providers. The term does not include the following services, whether offered on an intra-exchange or inter-exchange basis:
- (A) central office based PBX-type services for systems of 75 stations or more;
 - (B) billing and collection services;
 - (C) high-speed private line services of 1.544 megabits or greater;
 - (D) customized services;
 - (E) private line or virtual private line services;
 - (F) resold or shared local exchange telephone services if permitted by tariff;
 - (G) dark fiber services;

- (H) non-voice data transmission service offered as a separate service and not as a component of basic local telecommunications service;
 - (I) dedicated or virtually dedicated access services;
 - (J) a competitive exchange service; or
 - (K) any other service the commission determines is not a “local exchange telephone service.”
- (135) Local message -- A completed call between customer access lines located within the same local calling area.
- (136) Local message charge -- The charge that applies for a completed telephone call that is made when the calling customer access line and the customer access line to which the connection is established are both within the same local calling area, and a local message charge is applicable.
- (137) Local service charge -- The charge for furnishing facilities to enable a customer to send or receive telecommunications within the local calling area. This local calling area may include more than one exchange area.
- (138) Local telecommunications traffic --
- (A) Telecommunications traffic between a DCTU and a telecommunications carrier other than a commercial mobile radio service (CMRS) provider that originates and terminates within the mandatory single or multi-exchange local calling area of a DCTU including the mandatory EAS areas served by the DCTU; or

- (B) Telecommunications traffic between a DCTU and a CMRS provider that, at the beginning of the call, originates and terminates within the same major trading area.
- (139) Long distance telecommunications service -- That part of the total communication service rendered by a telecommunications utility which is furnished between customers in different local calling areas in accordance with the rates and regulations specified in the utility's tariff.
- (140) Long run -- A time period long enough to be consistent with the assumption that the company is in the planning stage and all of its inputs are variable and avoidable.
- (141) Long run incremental cost (LRIC) -- The change in total costs of the company of producing an increment of output in the long run when the company uses least cost technology. The LRIC should exclude any costs that, in the long run, are not brought into existence as a direct result of the increment of output.
- (142) Mandatory minimum standards -- The standards established by the Federal Communications Commission, outlining basic mandatory telecommunication relay services.
- (143) Market -- An exchange in which an incumbent local exchange company provides residential local exchange telephone service.
- (144) Master street address guide (MSAG) -- A database maintained by each 9-1-1 administrative entity of street names and house number ranges within their associated communities defining emergency service zones and their associated emergency service numbers to enable proper routing of 9-1-1 calls.

- (145) Meet point billing -- An access billing arrangement for services to access customers when local transport is jointly provided by more than one CTU.
- (146) Message -- A completed customer telephone call.
- (147) Message rate service -- A form of local exchange service under which all originated local messages are measured and charged for in accordance with the utility's tariff.
- (148) Minor rate change -- A change, including the restructuring of rates of existing services, that decreases the rates or revenues of the small local exchange company (SLEC) or that, together with any other rate or proposed or approved tariff changes in the 12 months preceding the date on which the proposed change will take effect, results in an increase of the SLEC's total regulated intrastate gross annual revenues by not more than 5.0%. Further, with regard to a change to a basic local access line rate, a minor change may not, together with any other change to that rate that went into effect during the 12 months preceding the proposed effective date of the proposed change, result in an increase of more than 50%.
- (149) Municipality -- A city, incorporated village, or town, existing, created, or organized under the general, home rule, or special laws of the state.
- (150) National integrated services digital network (ISDN) -- The standards and services promulgated for integrated services digital network by Bellcore.
- (151) Negotiating party -- A CTU or other entity with which a requesting CTU seeks to interconnect in order to complete all telephone calls made by or placed to a customer of the requesting CTU.
- (152) Next generation 9-1-1 system (NG9-1-1 system) -- A system of securely managed IP-based 9-1-1 networks and elements that augment and are capable of interoperating

with present-day E9-1-1 features and functions and add new capabilities. NG9-1-1 may replace or complement the present E9-1-1 system. NG9-1-1 is designed to provide access to emergency services from all sources, and to provide multimedia data capabilities for public safety answering positions and other emergency service organizations.

- (153) New service -- Any service not offered on a tariffed basis prior to the date of the application relating to such service and specifically excludes basic local telecommunications service including local measured service. If a proposed service could serve as an alternative or replacement for a service offered prior to the date of the new-service application and does not provide significant improvements (other than price) over, or significant additional services not available under, a service offered prior to the date of such application, it shall not be considered a new service.
- (154) Nonbasic services -- Those services identified in Public Utility Regulatory Act §58.151, including any service reclassified by the commission pursuant to Public Utility Regulatory Act §58.024.
- (155) Non-discriminatory -- Type of treatment that is not less favorable than that an interconnecting CTU provides to itself or its affiliates or other CTUs.
- (156) Non-dominant certificated telecommunications utility (NCTU) -- A CTU that is not a DCTU and has been granted a CCN (after September 1, 1995, in an area already certificated to a DCTU), a COA, or a SPCOA to provide local exchange service.
- (157) Nondominant carrier --
- (A) An interexchange telecommunications carrier (including a reseller of interexchange telecommunications services).

- (B) Any of the following that is not a dominant carrier:
 - (i) a specialized communications common carrier;
 - (ii) any other reseller of communications;
 - (iii) any other communications carrier that conveys, transmits, or receives communications in whole or in part over a telephone system; or
 - (iv) a provider of operator services that is not also a subscriber.
 - (C) A deregulated company that holds a COA.
- (158) North American Numbering Plan (NANP) -- Use of 10-digit dialing in the format of a 3-digit “NPA” followed by a 3-digit “NXX” and a 4-digit line number, NPA-NXX-XXX.
- (159) Numbering plan area (NPA) -- The first three digits of a ten-digit North American Numbering Plan (NANP) local telephone number uniquely identifying a Numbering Plan area. Generally referred to as the area code of a NANP telephone number.
- (160) NXX -- A 3-digit code in which N is any digit 2 through 9 and X is any digit 0 through 9. Typically used in describing the “Exchange Code” fields of a North American Numbering Plan telephone number.
- (161) Open network architecture -- The overall design of an ILEC’s network facilities and services to permit all users of the network, including the enhanced services operations of an ILEC and its competitors, to interconnect to specific basic network functions on an unbundled and non-discriminatory basis.
- (162) Operator service -- Any service using live operator or automated operator functions for the handling of telephone service, such as local collect, toll calling via collect, third number billing, credit card, and calling card services. The transmission of “1-

800” and “1-888” numbers, where the called party has arranged to be billed, is not operator service.

- (163) Operator service provider (OSP) -- Any person or entity that provides operator services by using either live or automated operator functions. When more than one entity is involved in processing an operator service call, the party setting the rates shall be considered to be the OSP. However, subscribers to customer-owned pay telephone service shall not be deemed to be OSPs.
- (164) Originating line screening (OLS) -- A two digit code passed by the local switching system with the automatic number identification (ANI) at the beginning of a call that provides information about the originating line.
- (165) Out-of-service trouble report -- An initial customer trouble report in which there is complete interruption of incoming or outgoing local exchange service. On multiple line services a failure of one central office line or a failure in common equipment affecting all lines is considered out of service. If an extension line failure does not result in the complete inability to receive or initiate calls, the report is not considered to be out of service.
- (166) P.01 grade of service -- A standard of service quality intended to measure the probability (P), expressed as a decimal fraction, of a telephone call being blocked. P.01 is the grade of service reflecting the probability that one call out of one hundred during the average busy hour will be blocked.
- (167) Packaged Service - The combination of any regulated service with any other regulated or unregulated service or with any service of an affiliate, offered to customers at a packaged rate or rates.

- (168) Partial deregulation -- The ability of a cooperative to offer new services on an optional basis and/or change its rates and tariffs under the provisions of the Public Utility Regulatory Act, §§53.351 - 53.359.
- (169) Pay-per-call-information services -- Services that allow a caller to dial a specified 1-900-XXX-XXXX or 976-XXXX number. Such services routinely deliver, for a predetermined (sometimes time-sensitive) fee, a pre-recorded or live message or interactive program. Usually a telecommunications utility will transport the call and bill the end-user on behalf of the information provider.
- (170) Pay telephone access service (PTAS) -- A service offered by a CTU which provides a two-way, or optionally, a one-way originating-only business access line composed of the serving central office line equipment, all outside plant facilities needed to connect the serving central office with the customer premises, and the network interface; this service is sold to pay telephone service providers.
- (171) Pay telephone service (PTS) -- A telecommunications service utilizing any coin, coinless, credit card reader, or cordless instrument that can be used by members of the general public, or business patrons, employees, and/or visitors of the premises' owner, provided that the end user pays for local or toll calls from such instrument on a per call basis. Pay per call telephone service provided to inmates of confinement facilities is PTS. For purposes of this section, coinless telephones provided in guest rooms by a hotel/motel are not pay telephones. A telephone that is primarily used by business patrons, employees, and/or visitors of the premises' owner is not a pay telephone if all local calls and "1-800" and "1-888" type calls from such telephone are free to the end user.

- (172) Per-call blocking -- A telecommunications service provided by a telecommunications provider that prevents the transmission of calling party information to a called party on a call-by-call basis.
- (173) Per-line blocking -- A telecommunications service provided by a telecommunications utility that prevents the transmission of calling party information to a called party on every call, unless the calling party acts affirmatively to release calling party information.
- (174) Percent interstate usage (PIU) -- An access customer-specific ratio or ratios determined by dividing interstate access minutes by total access minutes. The specific ratio shall be determined by the CTU unless the CTU's network is incapable of determining the jurisdiction of the access minutes. A PIU establishes the jurisdiction of switched access usage for determining rates charged to switched access customers and affects the allocation of switched access revenue and costs by CTUs between the interstate and intrastate jurisdictions.
- (175) Person -- Any natural person, partnership, municipal corporation, cooperative corporation, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.
- (176) Pleading -- A written document submitted by a party, or a person seeking to participate in a proceeding, setting forth allegations of fact, claims, requests for relief, legal argument, and/or other matters relating to a proceeding.
- (177) Prepaid local telephone service (PLTS) -- Prepaid local telephone service means:
- (A) voice grade dial tone residential service consisting of flat rate service or local measured service, if chosen by the customer and offered by the DCTU;

- (B) if applicable, mandatory services, including EAS, extended metropolitan service, or ELCS;
 - (C) tone dialing service;
 - (D) access to 911 service;
 - (E) access to dual party relay service;
 - (F) the ability to report service problems seven days a week;
 - (G) access to business office;
 - (H) primary directory listing;
 - (I) toll blocking service; and
 - (J) non-published service and non-listed service at the customer's option.
- (178) Premises -- A tract of land or real estate including buildings and other appurtenances thereon.
- (179) Pricing flexibility -- Discounts and other forms of pricing flexibility may not be preferential, prejudicial, or discriminatory. Pricing flexibility includes:
- (A) customer specific contracts;
 - (B) volume, term, and discount pricing;
 - (C) zone density pricing, with zone to be defined as an exchange;
 - (D) packaging of services; and
 - (E) other promotional pricing flexibility.
- (180) Primary interexchange carrier (PIC) -- The provider chosen by a customer to carry that customer's toll calls.
- (181) Primary interexchange carrier (PIC) freeze indicator -- An indicator that the end user has directed the CTU to make no changes in the end user's PIC.

- (182) Primary rate interface (PRI) integrated services digital network (ISDN) -- One of the access methods to ISDN, the 1.544-Mbps PRI comprises either twenty-three 64 Kbps B-channels and one 64 Kbps D-channel (23B+D) or twenty-four 64 Kbps B-channels (24B) when the associated call signaling is provided by another PRI in the group.
- (183) Primary service -- The initial provision of voice grade access between the customer's premises and the switched telecommunications network. This includes the initial connection to a new customer or the move of an existing customer to a new premises but does not include complex services.
- (184) Print translations -- The temporary storage of a message in an operator's screen during the actual process of relaying a conversation.
- (185) Privacy issue -- An issue that arises when a telecommunications provider proposes to offer a new telecommunications service or feature that would result in a change in the outflow of information about a customer. The term privacy issue is to be construed broadly. It includes, but is not limited to, changes in the following:
- (A) the type of information about a customer that is released;
 - (B) the customers about whom information is released;
 - (C) the entity or entities to whom the information about a customer is released;
 - (D) the technology used to convey the information;
 - (E) the time at which the information is conveyed; and
 - (F) any other change in the collection, use, storage, or release of information.
- (186) Private line -- A transmission path that is dedicated to a customer and that is not connected to a switching facility of a telecommunications utility, except that a

dedicated transmission path between switching facilities of interexchange carriers shall be considered a private line.

- (187) Proceeding -- A hearing, investigation, inquiry, or other procedure for finding facts or making a decision. The term includes a denial of relief or dismissal of a complaint. It may be rulemaking or non-rulemaking; rate setting or non-rate setting.
- (188) Promotional rate -- A temporary tariff, fare, toll, rental or other compensation charged by a certificated telecommunications utility (CTU) to new or new and existing customers and designed to induce customers to test a service. A promotional rate shall incorporate a reduction or a waiver of some rate element in the tariffed rates of the service, or a reduction or waiver of the service's installation charge and/or service connection charges, and shall not incorporate any charge for discontinuance of the service by the customer. Such rates may not be offered for basic local telecommunications service, including local measured service.
- (189) Promotional Service - a service offered to customers at a promotional rate or rates.
- (190) Provider of pay telephone service -- The entity that purchases PTAS from a CTU and registers with the Public Utility Commission as a provider of PTS to end users.
- (191) Public safety answering point (PSAP) -- A continuously operated communications facility established or authorized by local government authorities that answers 9-1-1 calls originating within a given service area, as further defined in Texas Health and Safety Code Chapters 771 and 772.
- (192) Public utility or utility -- A person or river authority that owns or operates for compensation in this state equipment or facilities to convey, transmit, or receive communications over a telephone system as a dominant carrier. The term includes a

lessee, trustee, or receiver of any of those entities, or a combination of those entities.

The term does not include a municipal corporation. A person is not a public utility solely because the person:

- (A) furnishes or furnishes and maintains a private system;
- (B) manufactures, distributes, installs, or maintains customer premises communications equipment and accessories; or
- (C) furnishes a telecommunications service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others.

(193) Public Utility Regulatory Act (PURA) -- The enabling statute for the Public Utility Commission of Texas, located in the Texas Utilities Code Annotated, §§11.001 - 66.016, (West 2007, Supplement 2013).

(194) Qualifying low-income consumer -- A consumer that participates in one of the following programs: Medicaid, food stamps, Supplemental Security Income, federal public housing assistance, or Low-Income Home Energy Assistance Program.

(195) Qualifying services --

- (A) residential flat rate basic local exchange service;
- (B) residential local exchange access service; and
- (C) residential local area calling usage.

(196) Rate -- Includes:

- (A) any compensation, tariff, charge, fare, toll, rental, or classification that is directly or indirectly demanded, observed, charged, or collected by a public

utility for a service, product, or commodity, described in the definition of utility in the Public Utility Regulatory Act §31.002 or §51.002; and

- (B) a rule, practice, or contract affecting the compensation, tariff, charge, fare, toll, rental, or classification.
- (197) Reciprocal compensation -- An arrangement between two carriers in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of local telecommunications traffic that originates on the network facilities of the other carrier.
- (198) Reclassification area -- The geographic area within the electing ILEC's territory, consisting of one or more exchange areas, for which it seeks reclassification of a service.
- (199) Redirect the call -- A procedure used by operator service providers (OSPs) that transmits a signal back to the originating telephone instrument that causes the instrument to disconnect the OSP's connection and to redial the digits originally dialed by the caller directly to the local exchange carrier's network.
- (200) Regional planning commission -- The meaning established in Texas Health and Safety Code §771.001(10).
- (201) Regulatory authority -- In accordance with the context where it is found, either the commission or the governing body of a municipality.
- (202) Relay Texas Advisory Committee (RTAC) -- The committee authorized by the Public Utility Regulatory Act, §56.110 and 1997 Texas General Laws Chapter 149.
- (203) Relay Texas -- The name by which telecommunications relay service in Texas is known.

- (204) Relay Texas administrator -- The individual employed by the commission to oversee the administration of statewide telecommunications relay service.
- (205) Repeated trouble report -- A customer trouble report regarding a specific line or circuit occurring within 30 days or one calendar month of a previously cleared trouble report on the same line or circuit.
- (206) Residual charge -- The per-minute charge designed to account for historical contribution to joint and common costs made by switched transport services.
- (207) Retail service -- A telecommunications service is considered a retail service when it is provided to residential or business end users and the use of the service is other than resale. Each tariffed or contract offering which a customer may purchase to the exclusion of other offerings shall be considered a service. For example: the various mileage bands for standard toll services are rate elements, not services; however, individual optional calling plans that can be purchased individually and which are offered as alternatives to each other are services, not rate elements.
- (208) Return-on-assets -- After-tax net operating income divided by total assets.
- (209) Reversal of partial deregulation -- The ability of a minimum of 10% of the members of a partially deregulated cooperative to request, in writing, that a vote be conducted to determine whether members prefer to reverse partial deregulation. Ten percent shall be calculated based upon the total number of members of record as of the calendar month preceding receipt of the request from members for reversal of partial deregulation.
- (210) Rule -- A statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the commission.

The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of the commission and not affecting private rights or procedures.

- (211) Rulemaking proceeding -- A proceeding conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, Subchapter B, to adopt, amend, or repeal a commission rule.
- (212) Rural incumbent local exchange company (ILEC) -- An ILEC that qualifies as a “rural telephone company” as defined in 47 United States Code §3(37) and/or 47 United States Code §251(f)(2).
- (213) Selective routing -- The feature provided with 9-1-1 or 311 service by which 9-1-1 or 311 calls are automatically directed to the appropriate answering point for serving the location from which the call originates.
- (214) Selective transfer -- A public safety answering point initiating the routing of a 9-1-1 call to a response agency by operation of one of several buttons typically designated as police, fire, and emergency medical, based on the emergency service number of the caller.
- (215) Separation -- The division of plant, revenues, expenses, taxes, and reserves applicable to exchange or local service if these items are used in common to provide public utility service to both local exchange telephone service and other service, such as interstate or intrastate toll service.
- (216) Service -- Has its broadest and most inclusive meaning. The term includes any act performed, anything supplied, and any facilities used or supplied by a public utility in the performance of the utility’s duties under the Public Utility Regulatory Act to

its patrons, employees, other public utilities, and the public. The term also includes the interchange or facilities between two or more public utilities. The term does not include the printing, distribution, or sale of advertising in a telephone directory.

- (217) Service connection charge -- A charge designed to recover the costs of non-recurring activities associated with connection of local exchange telephone service.
- (218) Service order system -- The system used by a telecommunications provider that, among other functions, tracks customer service requests and billing data.
- (219) Service provider -- Any entity that offers a product or service to a customer and that directly or indirectly charges to or collects from a customer's bill an amount for the product or service on a customer's bill received from a billing telecommunications utility.
- (220) Service provider certificate of operating authority (SPCOA) reseller -- A holder of a service provider certificate of operating authority that uses only resold telecommunications services provided by an ILEC or by a COA holder or by a SPCOA holder.
- (221) Service restoral charge -- A charge applied by the DCTU to restore service to a customer's telephone line after it has been suspended by the DCTU.
- (222) Serving wire center (SWC) -- The CTU designated central office which serves the access customer's point of demarcation.
- (223) Signaling for tandem switching -- The carrier identification code (CIC) and the OZZ code or equivalent information needed to perform tandem switching functions. The CIC identifies the interexchange carrier and the OZZ digits identify the call type and thus the interexchange carrier trunk to which traffic should be routed.

- (224) Small certificated telecommunications utility (CTU) -- A CTU with fewer than 2.0% of the nation's subscriber lines installed in the aggregate nationwide.
- (225) Small local exchange company (SLEC) -- Any incumbent CTU as of September 1, 1995, that has fewer than 31,000 access lines in service in this state, including the access lines of all affiliated incumbent local exchange companies within the state, or a telephone cooperative organized pursuant to the Telephone Cooperative Act, Texas Utilities Code Annotated, Chapter 162.
- (226) Small incumbent local exchange company (Small ILEC) -- An ILEC that is a cooperative corporation or has, together with all affiliated ILECs, fewer than 31,000 access lines in service in Texas.
- (227) Spanish speaking person -- A person who speaks any dialect of the Spanish language exclusively or as their primary language.
- (228) Special access -- A transmission path connecting customer designated premises to each other either directly or through a hub or hubs where bridging, multiplexing or network reconfiguration service functions are performed and includes all exchange access not requiring switching performed by the dominant carrier's end office switches.
- (229) Specialized Telecommunications Assistance Program (STAP) -- The program described in §26.415 of this title (relating to Specialized Telecommunications Assistance Program (STAP)).
- (230) Specialized Telecommunications Assistance Program (STAP) voucher -- A voucher issued by the Texas Department of Assistive and Rehabilitative Services under the equipment distribution program, in accordance with its rules, that an eligible

individual may use to acquire eligible specialized telecommunications devices from a vendor of such equipment.

- (231) Stand-alone costs -- The stand-alone costs of an element or service are defined as the forward-looking costs that an efficient entrant would incur in providing only that element or service.
- (232) Station -- A telephone instrument or other terminal device.
- (233) Study area -- An incumbent local exchange company's (ILEC's) existing service area in a given state.
- (234) Supplemental services -- Telecommunications features or services offered by a CTU for which analogous services or products may be available to the customer from a source other than a DCTU. Supplemental services shall not be construed to include optional extended area calling plans that a DCTU may offer pursuant to §26.217 of this title (relating to Administration of Extended Area Service (EAS) Requests), or pursuant to a final order of the commission in a proceeding pursuant to the Public Utility Regulatory Act, Chapter 53.
- (235) Suspension of service -- That period during which the customer's telephone line does not have dial tone but the customer's telephone number is not deleted from the central office switch and databases.
- (236) Switched access -- Access service that is provided by CTUs to access customers and that requires the use of CTU network switching or common line facilities generally, but not necessarily, for the origination or termination of interexchange calls. Switched access includes all forms of transport provided by the CTU over which switched access traffic is delivered.

- (237) Switched access demand -- Switched access minutes of use, or other appropriate measure where not billed on a minute of use basis, for each switched access rate element, normalized for out of period billings. For the purposes of this section, switched access demand shall include minutes of use billed for the local switching rate element.
- (238) Switched access minutes -- The measured or assumed duration of time that a CTU's network facilities are used by access customers. Access minutes are measured for the purpose of calculating access charges applicable to access customers.
- (239) Switched transport -- Transmission between a CTU's central office (including tandem-switching offices) and an interexchange carrier's point of presence.
- (240) Tandem-switched transport -- Transmission of traffic between the serving wire center and another CTU office that is switched at a tandem switch and charged on a usage basis.
- (241) Tariff -- The schedule of a utility containing all rates, tolls, and charges stated separately by type or kind of service and the customer class, and the rules and regulations of the utility stated separately by type or kind of service and the customer class.
- (242) Telecommunications provider -- As defined in the Public Utility Regulatory Act §51.002(10).
- (243) Telecommunications relay service (TRS) -- A service using oral and print translations by either live or automated means between individuals who are hearing-impaired or speech-impaired who use specialized telecommunications devices and

others who do not have such devices. Unless specified in the text, this term shall refer to intrastate telecommunications relay service only.

- (244) Telecommunications relay service (TRS) carrier -- The telecommunications carrier selected by the commission to provide statewide telecommunications relay service.
- (245) Telecommunications utility --
- (A) a public utility;
 - (B) an interexchange telecommunications carrier, including a reseller of interexchange telecommunications services;
 - (C) a specialized communications common carrier;
 - (D) a reseller of communications;
 - (E) a communications carrier who conveys, transmits, or receives communications wholly or partly over a telephone system;
 - (F) a provider of operator services as defined by §55.081, unless the provider is a subscriber to customer-owned PTS; and
 - (G) a separated affiliate or an electronic publishing joint venture as defined in the Public Utility Regulatory Act, Chapter 63.
- (246) Telephones intended to be utilized by the public -- Telephones that are accessible to the public, including, but not limited to, pay telephones, telephones in guest rooms and common areas of hotels, motels, or other lodging locations, and telephones in hospital patient rooms.
- (247) Telephone solicitation -- An unsolicited telephone call.
- (248) Telephone solicitor -- A person who makes or causes to be made a consumer telephone call, including a call made by an automatic dialing/announcing device.

- (249) Test year -- The most recent 12 months, beginning on the first day of a calendar or fiscal year quarter, for which operating data for a public utility are available.
- (250) Texas Universal Service Fund (TUSF) -- The fund authorized by the Public Utility Regulatory Act, §56.021 and 1997 Texas General Laws Chapter 149.
- (251) Tier 1 local exchange company -- A local exchange company with annual regulated operating revenues exceeding \$100 million.
- (252) Title IV-D Agency -- The office of the attorney general for the state of Texas.
- (253) Toll blocking -- A service provided by telecommunications carriers that lets consumers elect not to allow the completion of outgoing toll calls from their telecommunications channel.
- (254) Toll control -- A service provided by telecommunications carriers that allows consumers to specify a certain amount of toll usage that may be incurred on their telecommunications channel per month or per billing cycle.
- (255) Toll limitation -- Denotes both toll blocking and toll control.
- (256) Total element long-run incremental cost (TELRIC) -- The forward-looking cost over the long run of the total quantity of the facilities and functions that are directly attributable to, or reasonably identifiable as incremental to, such element, calculated taking as a given the CTU's provision of other elements.
- (257) Transitioning company -- An incumbent local exchange company for which at least one, but not all, of the company's markets has been deregulated.
- (258) Transport -- The transmission and/or any necessary tandem and/or switching of local telecommunications traffic from the interconnection point between the two carriers

to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than a DCTU.

- (259) Trunk -- A circuit facility connecting two switching systems.
- (260) Two-primary interexchange carrier (Two-PIC) equal access -- A method that allows a telephone subscriber to select one carrier for all 1+ and 0+ interLATA calls and the same or a different carrier for all 1+ and 0+ intraLATA calls.
- (261) Unauthorized charge -- Any charge on a customer's telephone bill that was not consented to or verified in compliance with §26.32 of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming")).
- (262) Unbundling -- The disaggregation of the ILEC's network/service to make available the individual network functions or features or rate elements used in providing an existing service.
- (263) Unit cost -- A cost per unit of output calculated by dividing the total long run incremental cost of production by the total number of units.
- (264) Usage sensitive blocking -- Blocking of a customer's access to services which are charged on a usage sensitive basis for completed calls. Such calls shall include, but not be limited to, call return, call trace, and auto redial.
- (265) Virtual private line -- Circuits or bandwidths, between fixed locations, that are available on demand and that can be dynamically allocated.
- (266) Voice carryover -- A technology that allows an individual who is hearing-impaired to speak directly to the other party in a telephone conversation and to use specialized telecommunications devices to receive communications through the telecommunications relay service operator.

- (267) Voice over Internet Protocol (VoIP) -- The technology used to transmit voice communications using Internet Protocol.
- (268) Voice over Internet Protocol service -- A service that:
- (A) uses Internet Protocol or a successor protocol to enable a real-time, two-way voice communication that originates from or terminates to the user's location in Internet Protocol or a successor protocol;
 - (B) requires a broadband connection from the user's location; and
 - (C) permits a user generally to receive a call that originates on the public switched telephone network and to terminate a call to the public switched telephone network.
- (269) Volume insensitive costs -- The costs of providing a basic network function (BNF) that do not vary with the volume of output of the services that use the BNF.
- (270) Volume sensitive costs -- The costs of providing a basic network function (BNF) that vary with the volume of output of the services that use the BNF.
- (271) Wireless provider -- A provider that:
- (A) provides commercial mobile radio service as defined in paragraph (40) of this section; or
 - (B) utilizes fixed wireless technology to provide local exchange service.
- (272) Wholesale service -- A telecommunications service is considered a wholesale service when it is provided to a telecommunications utility and the use of the service is to provide a retail service to residence or business end-user customers.
- (273) Working capital requirements -- The additional capital required to fund the increased level of accounts receivable necessary to provide telecommunications service.

- (274) “0-” call -- A call made by the caller dialing the digit “0” and no other digits within five seconds. A “0-” call may be made after a digit (or digits) to access the local network is (are) dialed.
- (275) “0+” call -- A call made by the caller dialing the digit “0” followed by the terminating telephone number. On some automated call equipment, a digit or digits may be dialed between the “0” and the terminating telephone number.
- (276) 311 answering point -- A communications facility that:
- (A) is operated, at a minimum, during normal business hours;
 - (B) is assigned the responsibility to receive 311 calls and, as appropriate, to dispatch the non-emergency police or other governmental services, or to transfer or relay 311 calls to the governmental entity;
 - (C) is the first point of reception by a governmental entity of a 311 call; and
 - (D) serves the jurisdictions in which it is located or other participating jurisdictions.
- (277) 311 service -- A telecommunications service provided by a certificated telecommunications provider through which the end user of a public telephone system has the ability to reach non-emergency police and other governmental services by dialing the digits 3-1-1. 311 service must contain the selective routing feature or other equivalent state-of-the-art feature.
- (278) 311 service request -- A written request from a governmental entity to a CTU requesting the provision of 311 service. A 311 service request must:
- (A) be in writing;

- (B) contain an outline of the program the governmental entity will pursue to adequately educate the public on the 311 service;
 - (C) contain an outline from the governmental entity for implementation of 311 service;
 - (D) contain a description of the likely source of funding for the 311 service (i.e., from general revenues, special appropriations, etc.); and
 - (E) contain a listing of the specific departments or agencies of the governmental entity that will actually provide the non-emergency police and other governmental services.
- (279) 311 system -- A system of processing 311 calls.
- (280) 9-1-1 administrative entity -- A regional planning commission as defined in Texas Health and Safety Code §771.001(10) or an emergency communication district as defined in Texas Health and Safety Code §771.001(3).
- (281) 9-1-1 database management services provider -- An entity designated by a 9-1-1 administrative entity to provide 9-1-1 database management services that support the provision of 9-1-1 services.
- (282) 9-1-1 database services -- Services purchased by a 9-1-1 administrative entity that accepts, processes, and validates subscriber record information of telecommunications providers for purposes of selective routing and automatic location identification, and that may also provide statistical performance measures.
- (283) 9-1-1 network services -- Services purchased by a 9-1-1 administrative entity that routes 9-1-1 calls from an E9-1-1 selective router, 9-1-1 tandem, next generation 9-

1-1 system, Internet Protocol-based 9-1-1 system or its equivalent to public safety answering points or a public safety answering point network.

- (284) 9-1-1 network services provider -- A CTU designated by the appropriate 9-1-1 administrative entity to provide 9-1-1 network services in a designated area.
- (285) 911 system -- A system of processing emergency 911 calls, as defined in Texas Health and Safety Code §772.001, as may be subsequently amended.
- (286) 9-1-1 selective routing tandem switch -- A switch located in a telephone central office that is equipped to accept, process, and route 9-1-1 calls to a predetermined, specific location. Also known as E9-1-1 control office or E9-1-1 selective router.
- (287) 9-1-1 service -- As defined in Texas Health and Safety Code §771.001(6) and §772.001(6).
- (288) 9-1-1 service agreement -- A contract addressing the 9-1-1 service arrangements for a local area that the appropriate 9-1-1 administrative entity enters into.
- (289) 9-1-1 service arrangement -- Each particular arrangement for 9-1-1 emergency service specified by the appropriate 9-1-1 administrative entity for the relevant rate centers within its jurisdictional area and that is subject to a 9-1-1 service agreement.

§26.22. Request for Service.**(a) Dominant certificated telecommunications utility (DCTU).**

- (1) Every DCTU shall provide local telecommunications service to each qualified applicant for service and to each of its customers within its certificated area in accordance with §26.54(c)(1) of this title (relating to Service Objectives and Performance Benchmarks). A deregulated company that holds a certificate of operating authority is not obligated to be a provider of last resort. A transitioning company is not obligated to be a provider of last resort in a deregulated market.
- (2) If construction, such as line extensions or facilities, is required for installation of local telecommunications service:
 - (A) the DCTU shall complete the construction within 90 days or within a time period agreed to by the customer and the DCTU after the applicant has established satisfactory credit in accordance with §26.24 of this title (relating to Credit Requirements and Deposits), made satisfactory payment arrangements for construction charges, and complied with state and municipal regulations;
 - (B) the DCTU shall contact the applicant for service within ten work days of receipt of the application and give the applicant an estimated completion date and an estimated cost for all charges to be incurred by the applicant; and
 - (C) following the assessment of any necessary construction, the DCTU shall explain to the applicant any construction cost options such as

rebates, sharing of construction costs between the DCTU and the applicant, or sharing of costs between the applicant and other applicants.

- (3) A DCTU may require an applicant for service to establish satisfactory credit or to pay a deposit in accordance with §26.24 of this title.

(b) **Nondominant certificated telecommunications utility (NCTU).**

- (1) This subsection does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under PURA §52.154.
- (2) Every NCTU shall provide local telecommunications service to applicants within its certificated area who have accepted the NCTU's terms and conditions of service and in accordance with the customer safeguards in §26.272(i) of this title (relating to Interconnection).
- (3) If construction, such as line extensions or facilities, is required for installation of local telecommunications service:
 - (A) the NCTU shall contact the applicant for service within ten work days of receipt of the application and give the applicant an estimated completion date and an estimated cost for all charges to be incurred by the applicant; and
 - (B) following the assessment of any necessary construction, the NCTU shall explain to the applicant any construction cost options such as rebates, sharing of construction costs between the NCTU and the applicant, or sharing of costs between the applicant and other applicants.

§26.23. Refusal of Service.**(a) Dominant certificated telecommunications utility (DCTU).**

- (1) A DCTU is relieved of its provider of last resort (POLR) obligations in a market if the market has been deregulated pursuant to Public Utility Regulatory Act Chapter 65. A DCTU with POLR obligations may refuse to provide an applicant with basic local telecommunications service only for one or more of the following reasons:
 - (A) Applicant's facilities inadequate. The applicant's installation or equipment is known to be hazardous or of such character that satisfactory service cannot be given.
 - (B) Use of prohibited equipment or attachments. The applicant fails to comply with the DCTU's tariffs pertaining to operation of nonstandard equipment or unauthorized attachments that interfere with the service of others.
 - (C) Failure to pay guarantee. The applicant has acted as a guarantor for another customer of the DCTU and fails to pay the guaranteed amount, where such guarantee was made in writing to the DCTU and was a condition of service.
 - (D) Intent to deceive. The applicant requests service at a location where another customer received or continues to receive service, the other customer's bill from the DCTU is unpaid at that location, and the DCTU can prove that the change of account holder and billing name

is made to avoid or evade payment of an outstanding bill owed to the DCTU.

- (E) For indebtedness.
 - (i) If a residential applicant owes a debt to any DCTU for:
 - (I) tariffed local telecommunications service, except as provided in §26.29 of this title (relating to Prepaid Local Telephone Service (PLTS)); or
 - (II) long distance charges after toll blocking was imposed as provided in §26.28 of this title (relating to Suspension or Disconnection of Service).
 - (ii) If a non-residential applicant owes a debt to any DCTU for tariffed non-residential local telecommunications service, including long distance charges.
 - (iii) If an applicant's indebtedness is in dispute, basic local telecommunications service shall be provided upon the applicant's compliance with the deposit requirements in §26.24 of this title (relating to Credit Requirements and Deposits).
 - (F) Refusal to pay a deposit. The applicant refuses to pay a deposit if the applicant is required to do so under §26.24 of this title.
 - (G) Failure to comply with regulations. The applicant fails to comply with all applicable state and municipal regulations.
- (2) **Applicant's recourse.**

- (A) If a DCTU has refused to serve a residential applicant, the DCTU must send the applicant notice in writing within five work days of the determination to refuse service:
- (i) of the reason or reasons for its refusal;
 - (ii) that the applicant will be eligible for service if the applicant remedies the reason or reasons for refusal and complies with the DCTU's tariffs and terms and conditions of service;
 - (iii) that the applicant may request a supervisory review by the DCTU and may file a complaint with the commission as described in §26.30 of this title (relating to Complaints); and
 - (iv) that no telecommunications utility is permitted to:
 - (I) refuse service on the basis of race, color, sex, nationality, religion, marital status, income level, or source of income; nor
 - (II) unreasonably refuse service on the basis of geographic location.
- (B) Additionally, the DCTU must inform applicants eligible for prepaid local telephone service under §26.29 of this title that this service is available if they are not otherwise eligible for basic local telecommunications service.
- (3) **Insufficient grounds for refusal to serve.** The following are not sufficient grounds for refusal of basic local telecommunications service to an applicant by a DCTU:

- (A) delinquency in payment for service by a previous occupant of the premises to be served;
 - (B) failure to pay for any charges that are not provided in the DCTU's tariffs on file at the commission;
 - (C) failure to pay a bill that includes more than six months of underbilling unless the underbilling is the result of theft of service by the applicant;
 - (D) failure to pay the bill of another customer at the same address except where the change of account holder and billing name is made to avoid or evade payment of that bill; and
 - (E) failure of a residential applicant to pay for any charges other than for local telecommunications service except for long distance charges incurred after toll blocking was imposed as provided in §26.28 of this title.
- (b) **Nondominant certificated telecommunications utility (NCTU).**
- (1) This subsection does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under PURA §52.154.
 - (2) An NCTU may refuse to provide an applicant with basic local telecommunications service for:
 - (A) the applicant's failure to comply with all applicable federal, state, and municipal regulations; or

- (B) any other reason that does not violate applicable federal, state, or municipal statutes, rules, or regulations.
- (3) **Applicant's recourse.**
 - (A) If an NCTU who offers residential service has refused to provide a residential applicant with basic local telecommunications service, the NCTU must inform the applicant of the determination to refuse service:
 - (i) of the reason or reasons for its refusal; and
 - (ii) that the applicant will be eligible for service if the applicant remedies the reason or reasons for refusal and complies with the NCTU's terms and conditions of service.
 - (B) The information required by subparagraph (A) of this paragraph shall be sent to the applicant in writing within five working days, if required by the federal Equal Credit Opportunity Act, 15 U.S.C. §1691 et seq., or if it is requested by the applicant. The NCTU shall inform the applicant that the applicant may request a supervisory review by the NCTU and may file a complaint with the commission as described in §26.30 of this title.
- (4) **Insufficient grounds for refusal to serve.** The following are not sufficient grounds for refusal of basic local telecommunications service to an applicant by an NCTU:
 - (A) delinquency in payment for service by a previous occupant of the premises to be served;

- (B) failure to pay for any charges that are not provided in the NCTU's tariffs;
- (C) failure to pay a bill that includes more than six months of underbilling unless the underbilling is the result of theft of service by the applicant;
- (D) failure to pay the bill of another customer at the same address except where the change of account holder and billing name is made to avoid or evade payment of that bill; and
- (E) failure of a residential applicant to pay for any charges other than for local telecommunications service except for long distance charges incurred after toll blocking was imposed as provided in §26.28 of this title.

§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). Only subsections (d)(3), (e)(1)(C) and (e)(7) of this section apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under PURA §52.154.
- (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. The CTU shall use the term or acceptable abbreviation, in paragraph (7) of this subsection to the extent they apply to the customer's bill. If an abbreviation other than the acceptable abbreviation is used for the term, then the term must also be identified on the customer's bill. Terms and abbreviations may be completely capitalized, partially capitalized, not capitalized, hyphenated, or not hyphenated.
- (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.
- (7) Defined terms.
 - (A) **Federal excise tax** -- Federal tax assessed on non-usage sensitive basic local service that is billed separately from long distance service.
Acceptable abbreviation: Fed excise tax.
 - (B) **Federal subscriber line charge** -- A charge that the Federal Communications Commission (FCC) allows a CTU to impose on its customers to recover costs associated with interstate access to the

local telecommunications networks. The FCC does not require a CTU company to impose this charge, and the CTU does not remit the charge to the federal government. The charge may be used by the CTU to pay for a part of the cost of lines, wires, poles, conduit, equipment and facilities that provide interstate access to the local telecommunications network. Acceptable abbreviation: Fed subscriber line chg.

- (C) **Federal universal service fee** -- A federal fee for a fund that supports affordable basic phone service to all Americans, including low-income customers, schools, libraries, and rural health care providers. CTUs impose this fee to cover their required support for the fund. The fee is set by the FCC. Acceptable abbreviation: Fed universal svc fee.
- (D) **Municipal right-of-way fee** -- A fee used to compensate municipalities for the use of their rights-of-way. Acceptable abbreviation: Municipal ROW fee.
- (E) **Texas universal service** -- A state fee for a fund that supports affordable service to customers in high-cost rural areas, funds the Relay Texas service and related assistance for the hearing-disabled, and funds telecommunications services discounts for low-income customers (Lifeline). The fee is set by the Public Utility Commission.
- (F) **9-1-1 fee** -- A fee used to fund the 9-1-1 telephone network that allows callers to reach a public safety agency when they dial the digits

“9-1-1.” The amount of the fee varies by region and is set by the Texas Commission on State Emergency Communications.

- (G) **9-1-1 equalization fee** -- A fee used to provide financial support for regions where the 9-1-1 fee does not fully offset the cost of 9-1-1 service. The fee is imposed on each customer receiving intrastate long-distance service. The fee is set by the Texas Commission on State Emergency Communications.
- (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.

- (g) **Effective date.** The effective date of this section is June 1, 2010.

§26.27. Bill Payment and Adjustments.**(a) Dominant certificated telecommunications utility (DCTU).**

- (1) **Bill due date.** The bill provided to the customer shall include the payment due date, which shall not be less than 16 days after issuance.
 - (A) The issuance date is the postmark date on the envelope containing the bill or the issuance date on the bill if there is no postmark or envelope.
 - (B) Payment for service is delinquent if not received at the DCTU or at the DCTU's authorized payment agency by close of business on the due date.
 - (C) If the sixteenth day falls on a holiday or weekend, then the due date shall be the next work day after the sixteenth day.
- (2) **Penalty on delinquent bills for retail service.** A DCTU providing any service to the state, including service to an agency in any branch of government, shall not assess a fee, penalty, interest, or other charge to the state for delinquent payment of a bill.
- (3) **Billing adjustments.**
 - (A) **Service interruptions.** In the event a customer's service is interrupted other than by the negligence or willful act of the customer, and it remains interrupted for 24 hours or longer after being reported and after access to the premises is made available, an appropriate refund shall be made to the customer.
 - (i) The amount of refund shall be:

- (I) determined on the basis of the known period of interruption, generally beginning from the time the service interruption is first reported; and
- (II) the refund to the customer shall be the proportionate part of the month's flat rate charges for the period of days and that portion of the service facilities rendered useless or inoperative.
 - (ii) The refund may be made by a credit on a subsequent bill.
- (B) Overbilling. If charges are found to be higher than authorized by the DCTU's tariffs or the terms and conditions of service, an appropriate refund shall be made to the customer.
 - (i) The refund shall be made for the entire period of the overbilling.
 - (ii) If the overbilling is corrected within three billing cycles of the initial bill in error, interest is not required to be paid on the overcharge.
 - (iii) If the overbilling is not corrected within three billing cycles of the initial bill in error, interest shall be paid on the amount of the overcharges. The minimum interest to be paid shall be based on the rate set by the commission on December 1 of the preceding year, compounded monthly, and accruing from the date of payment or the initial date of the bill in error.

- (iv) The refund may be made by a credit on a subsequent bill, unless the customer requests otherwise.
- (C) Underbilling. If charges are found to be lower than authorized by the DCTU's tariffs or terms and conditions of service, or if the DCTU failed to bill the customer for service, then:
- (i) The customer may be backbilled for the amount that was underbilled for no more than six months from the date the error was discovered unless underbilling is a result of theft of service by the customer.
 - (ii) Service may be disconnected if the customer fails to pay charges arising from an underbilling.
 - (iii) If the underbilling is \$50 or more, the DCTU shall offer the customer a deferred payment plan option for the same length of time as that of the underbilling. A deferred payment plan need not be offered to a customer whose underpayment is due to theft of service.
 - (iv) Interest on underbilled amounts shall:
 - (I) not be charged unless such amounts are found to be the result of theft of service by the customer; and
 - (II) not exceed an amount based on the rate set by the commission on December 1 of the preceding year, compounded monthly, and accruing from the day the

customer is found to have first tampered with, bypassed, or diverted service.

- (4) **Disputed bills.** If there is a dispute between a customer and a DCTU about any bill for DCTU service, the DCTU shall:
 - (A) investigate and report the results to the customer; and
 - (B) inform the customer of the complaint procedures of the commission in accordance with §26.30 of this title (relating to Complaints), if the dispute is not resolved.
- (5) **Notice of alternative payment programs or payment assistance.** When a customer contacts a DCTU and indicates inability to pay a bill or need of assistance with payment, the DCTU shall inform the customer of all alternative payment options and payment assistance programs available from the DCTU, such as payment arrangements, deferred payment plans, and disconnection moratoriums for the ill, as applicable, and of the eligibility requirements and application procedure for each.
- (6) **Payment arrangement.** A payment arrangement is any agreement between the DCTU and a customer that allows the customer to pay the outstanding bill after its due date but before the due date of the next bill.
 - (A) A payment arrangement may be established in person or by telephone.
 - (B) If the DCTU issued a suspension or disconnection notice before the payment arrangement was made, that suspension or disconnection shall be suspended until after the due date for the payment arrangement.

- (C) If a customer does not fulfill the obligations of the payment arrangement, the DCTU may suspend or disconnect service after the later of the due date for the payment arrangement or the suspension or disconnection date indicated in the notice in accordance with §26.28 of this title (relating to Suspension or Disconnection of Service), without issuing an additional notice.
- (7) **Deferred payment plan.** A deferred payment plan is any written agreement between the DCTU and a customer that allows a customer to pay an outstanding bill in installments that extend beyond the due date of the next bill.
- (A) The terms of a deferred payment plan may be established in person or by telephone, but must be put in writing to be effective.
- (B) The DCTU shall offer a deferred payment plan to any residential customer, including a guarantor of any residential customer, who has expressed an inability to pay all of the bill, if that customer has not been issued more than two suspension or disconnection notices during the preceding 12 months.
- (C) Every deferred payment plan shall provide that the delinquent amount may be paid in equal installments over at least three billing cycles.
- (D) When a residential customer has received service from its current DCTU for less than three months, the DCTU is not required to offer a deferred payment plan if the residential customer lacks:
- (i) sufficient credit; or

- (ii) a satisfactory history of payment for service from a previous DCTU.
- (E) Every deferred payment plan offered by a DCTU:
- (i) shall state, immediately preceding the space provided for the customer's signature and in boldface type no smaller than 14 point size, the following: **“THIS IS A BINDING CONTRACT”** followed by **“If you are not satisfied with this contract, or if agreement was made by telephone and you feel this contract does not reflect your understanding of that agreement, contact the utility immediately and do not sign this contract. If you do not contact the utility, or if you sign this agreement, you may give up your right to dispute the amount due under the agreement except for the utility's failure or refusal to comply with the terms of this agreement.”**
 - (I) In addition, if the customer and the DCTU representative or agent meet in person, the DCTU representative shall read the preceding statement to the customer.
 - (II) The DCTU shall provide information to the customer as necessary in accordance with §26.26 of this title (relating to Foreign Language Requirements) to make

the preceding statement understandable to the customer;

- (ii) may include a 5.0% penalty for late payment but shall not include a finance charge;
 - (iii) shall state the length of time covered by the plan;
 - (iv) shall state the total amount to be paid;
 - (v) shall state the specific amount of each installment;
 - (vi) shall allow the DCTU to disconnect service if a customer does not fulfill the terms of the deferred payment plan;
 - (vii) shall not refuse a customer participation in such a program on the basis of race, nationality, religion, color, sex, marital status, income level, or source of income and shall not unreasonably refuse a customer participation in such a program on the basis of geographic location;
 - (viii) shall be signed by the customer and a copy of the signed plan shall be provided to the customer; and
 - (ix) shall allow either the customer or the DCTU to renegotiate the deferred payment plan, if the customer's economic or financial circumstances change substantially during the time of the plan.
- (F) A DCTU may disconnect a customer who does not meet the terms of a deferred payment plan.
- (i) The DCTU may not disconnect service until a disconnection notice in accordance with §26.28 of this title has been issued

to the customer indicating that the customer has not met the terms of the plan.

(ii) The DCTU may renegotiate the deferred payment plan agreement before disconnection.

(iii) No additional notice is required if the customer:

(I) did not sign the deferred payment plan;

(II) is not otherwise fulfilling the terms of the plan; and

(III) was previously provided a disconnection notice for the outstanding amount.

(8) **Residential partial payments.** Residential service payment shall first be allocated to basic local telecommunications service.

(b) **Nondominant certificated telecommunications utility (NCTU).**

(1) **Application:** Only paragraphs (3), (5) and (6) of this subsection apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under PURA §52.154.

(2) **Bill due date.** The bill provided to the customer shall include the payment due date, which shall not be less than 16 days after issuance.

(A) The issuance date is the postmark date on the envelope containing the bill or the issuance date on the bill if there is no postmark or envelope.

(B) Payment for service is delinquent if not received at the NCTU or at the NCTU's authorized payment agency by close of business on the due date.

- (C) If the sixteenth day falls on a holiday or weekend, then the due date shall be the next work day after the sixteenth day.
 - (D) If the due date shown on the bill falls on a holiday or weekend, an NCTU shall include a statement on the bill or in the terms and conditions of service that informs the customer that the due date is extended to the next work day.
- (3) **Penalty on delinquent bills for retail service.** An NCTU providing any service to the state, including service to an agency in any branch of government, shall not assess a fee, penalty, interest, or other charge to the state for delinquent payment of a bill.
- (4) **Billing adjustments.**
- (A) **Overbilling.** If charges are higher than the NCTU's tariff, schedule, or price list terms and conditions of service, or a customer-specific contract, an appropriate refund shall be made to the customer:
 - (i) The refund shall be made for the entire period of the overbilling.
 - (ii) If the overbilling is corrected within three billing cycles of the initial bill in error, interest is not required to be paid on the overcharge.
 - (iii) If the overbilling is not corrected within three billing cycles of the initial bill in error, interest shall be paid on the amount of the overcharges. The minimum interest to be paid shall be

based on the rate set by the commission on December 1 of the preceding year, compounded monthly, and accruing from the date of payment or the initial date of the bill in error.

(iv) The refund may be made by a credit on a subsequent bill, unless the customer requests otherwise.

(B) Underbilling. If charges are found to be lower than authorized by the NCTU's tariff, schedule, or price list, terms and conditions of service, or a customer-specific contract, or if the NCTU failed to bill the customer for service, then:

(i) The customer may be backbilled for the amount that was underbilled for no more than six months from the date the initial error was discovered unless underbilling is a result of theft of service by the customer.

(ii) Service may be disconnected if the customer fails to pay charges arising from an underbilling.

(iii) If the underbilling is \$50 or more, the NCTU shall offer the customer a payment plan option for the same length of time as that of the underbilling. A payment plan need not be offered to a customer whose underpayment is due to theft of service.

(iv) Interest on underbilled amounts shall:

(I) not be charged unless such amounts are found to be the result of theft of service by the customer; and

- (II) not exceed an amount based on the rate set by the commission on December 1 of the preceding year, compounded monthly, and accruing from the day the customer is found to have first tampered with, bypassed, or diverted service.
 - (5) **Disputed bills.** If there is a dispute between a customer and an NCTU about any bill for NCTU service, the NCTU shall:
 - (A) investigate and report the results to the customer; and
 - (B) inform the customer of the complaint procedures of the commission in accordance with §26.30 of this title if the dispute is not resolved.
 - (6) **Notice of alternative payment programs or payment assistance.** When a customer contacts an NCTU and indicates inability to pay a bill or need of assistance with payment, the NCTU shall inform the customer of any alternative payment options and payment assistance programs available to the customer.
 - (7) **Residential partial payments.** Residential service payment shall first be allocated to basic local telecommunications service.
- (c) **NCTU implementation.** NCTUs shall implement this section no later than March 1, 2001.

§26.28. Suspension or Disconnection of Service.**(a) Dominant certificated telecommunications utility (DCTU).**

- (1) Suspension or disconnection policy.** If a DCTU chooses to suspend or disconnect a customer's basic local telecommunications service, it must follow the procedures in this subsection or modify them in ways that are more generous to the customer in terms of the cause for suspension or disconnection, the timing of the suspension or disconnection notice, and the period between notice and suspension or disconnection. Each DCTU is encouraged to develop specific policies for suspension and disconnection that treat its customers with dignity and respect for customers' or members' circumstances and payment history, and to implement those policies in ways that are consistent and non-discriminatory. Suspension or disconnection are options allowed by the commission, not requirements placed upon the DCTU by the commission.
- (2) Suspension or disconnection with notice.** After proper notice pursuant to paragraph (7) of this subsection, a DCTU may suspend or disconnect basic local telecommunications service for any of the following reasons:
 - (A)** failure to pay tariffed charges for local telecommunications services or make deferred payment arrangements by the date of suspension or disconnection;
 - (B)** failure of a residential customer to pay long distance charges incurred after toll blocking was imposed;

- (C) failure of a non-residential customer to pay long distance charges only where the DCTU bills those charges to the customer pursuant to its tariffs or billing and collection contracts, or make deferred payment arrangements by the date of suspension or disconnection;
 - (D) failure to comply with the terms of a deferred payment agreement except as provided in §26.29 of this title (relating to Prepaid Local Telephone Service (PLTS));
 - (E) violation of the DCTU's rules on the use of service in a manner which interferes with the service of others or the operation of nonstandard equipment, if a reasonable attempt has been made to notify the customer and the customer has a reasonable opportunity to remedy the situation;
 - (F) failure to pay a deposit pursuant to §26.24 of this title (relating to Credit Requirements and Deposits); or
 - (G) failure of the guarantor to pay the amount guaranteed, when the DCTU has a written agreement, signed by the guarantor, that allows for disconnection of the guarantor's service for nonpayment.
- (3) **Suspension or disconnection without notice.** Basic local telecommunications service may be suspended or disconnected without notice, except as provided in §26.29 of this title, for any of the following reasons:
- (A) where service is connected without authority;
 - (B) where service was reconnected without authority; or

- (C) where there are instances of tampering with the DCTU's equipment, evidence of theft of service, or other acts to defraud the DCTU.
- (4) **Suspension or disconnection prohibited.** Basic local telecommunications service may not be suspended or disconnected for any of these reasons:
- (A) failure to pay for any charges that are not provided for in a DCTU's tariffs;
 - (B) failure to pay for a different type or class of utility service unless charges were included on the bill at the time service was initiated;
 - (C) failure to pay charges resulting from underbilling that is more than six months before the current billing, except for theft of service;
 - (D) failure to pay disputed charges until a determination is made on the accuracy of the charges; or
 - (E) failure of a residential customer to pay for any charges other than for tariffed residential local telecommunications services, except for the nonpayment of long distance charges incurred after toll blocking was imposed.
- (5) **Suspension or disconnection on holidays or weekends.** A DCTU shall not suspend or disconnect service on holidays or weekends, or the day before a holiday or weekend, unless DCTU personnel are available on those days to take payments and reconnect service. A DCTU may suspend or disconnect service on holidays or weekends, or the day before a holiday or weekend, when:
- (A) a dangerous condition exists;

- (B) notice is not required pursuant to paragraph (3) of this subsection; or
 - (C) the customer requests disconnection.
- (6) **Suspension or disconnection for ill and disabled.** No DCTU may suspend or disconnect service at the permanent residence of a delinquent customer if that customer establishes that such action will prevent the customer from summoning emergency medical help for someone who is seriously ill residing at that residence.
- (A) Each time a customer seeks to avoid suspension or disconnection of service under this subsection, the customer before the date of suspension or disconnection shall:
 - (i) have the person's attending physician (for purposes of this subsection, the term "physician" shall mean any public health official, including, but not limited to, medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar public health official) contact the DCTU by the stated date of disconnection;
 - (ii) have the person's attending physician submit a written statement to the DCTU; and
 - (iii) enter into a deferred payment plan.
 - (B) The prohibition against suspension or disconnection provided by this subsection shall last 63 days from the issuance of the DCTU bill or a shorter period agreed upon by the DCTU and the customer or physician.

- (7) **Suspension and disconnection notices.** Any suspension or disconnection notice issued by a DCTU to a customer shall:
- (A) not be issued to the customer before the first day after the bill is due. Payment of the delinquent bill at a DCTU's authorized payment agency is considered payment to the DCTU;
 - (B) be a separate mailing or hand delivery or sent electronically if requested by the customer, with a stated date of suspension or disconnection and with the words "suspension notice," or "disconnection notice," or similar language prominently displayed on the notice;
 - (C) have a suspension or disconnection date that is not less than ten days after the notice is issued;
 - (D) be in English and Spanish;
 - (E) for residential customers, indicate the specific amount owed for tariffed local telecommunications services required to maintain basic local telecommunications service; and
 - (F) include a statement notifying customers that if they need assistance paying their bill, or are ill and unable to pay their bill, they may be able to make some alternative payment arrangement or establish a deferred payment plan. The notice shall advise customers to contact the DCTU for more information.

- (8) **Residential customer payment allocations.** Payment allocations related to basic local telecommunications service suspension or disconnection are as follows:
- (A) Payments shall first be allocated to basic local telecommunications service.
 - (B) If services are bundled, the rate of basic local telecommunications service shall be the DCTU's charge for stand-alone basic local telecommunications service.
- (9) **Toll blocking.**
- (A) The DCTU may toll block a residential customer for the nonpayment of long distance charges.
 - (B) Access to toll-free numbers. Where technically capable, toll blocking shall allow access to toll-free numbers.
 - (C) Nondiscriminatory application. The DCTU shall not apply toll blocking in an unreasonably preferential, prejudicial, or discriminatory manner.
 - (D) Notice requirement. The DCTU shall notify the customer within 24 hours of initiating toll blocking.
- (10) **Release of telephone line.**
- (A) Upon a request to switch a current customer to another local service provider, the DCTU shall release the customer's telephone line and number to the preferred provider in a manner to expedite the switch without disruption in service.

- (B) Upon a request to switch a suspended customer to another local service provider, the DCTU shall release the customer's telephone line and number within five days after the request is received. Upon a request to switch a disconnected customer to another local service provider, the DCTU shall release the customer's telephone line within five days after the request is received.
- (C) A DCTU shall not refuse to release a customer's telephone line and number due to the non-payment of a bill.

(b) **Nondominant certificated telecommunications utility (NCTU).**

- (1) **Application.** Only paragraphs (2)-(4), (7)(A)-(D) and (10) of this subsection apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under PURA §52.154.
- (2) **Suspension or disconnection policy.** If an NCTU chooses to suspend or disconnect a customer's basic local telecommunications service, it must follow the procedures in this subsection or modify them in ways that are more generous to the customer in terms of the cause for suspension or disconnection, the timing of the suspension or disconnection notice, and the period between notice and suspension or disconnection. Each NCTU is encouraged to develop specific policies for suspension and disconnection that treat its customers with dignity and respect for customers' or members' circumstances and payment history, and to implement those policies in ways that are consistent and non-discriminatory. Suspension or disconnection are

options allowed by the commission, not requirements placed upon the NCTU by the commission.

- (3) **Suspension or disconnection with notice.** After proper notice pursuant to paragraph (7) of this subsection, an NCTU may suspend or disconnect basic local telecommunications service for any legal reason that is clearly disclosed in the customer's terms and conditions of service.
- (4) **Suspension or disconnection without notice.** Basic local telecommunications service may be suspended or disconnected without notice for any of the following reasons:
 - (A) where service is connected without authority;
 - (B) where service was reconnected without authority; or
 - (C) where there are instances of tampering with the NCTU's equipment, evidence of theft of service, or other acts to defraud the NCTU.
- (5) **Suspension or disconnection prohibited.** Basic local telecommunications service may not be suspended or disconnected for any of the following reasons:
 - (A) failure to pay for any charges that are not provided for in an NCTU's tariff, schedule, list, terms and conditions of service, or customer-specific contract;
 - (B) failure to pay for a different type or class of utility service unless charges were included on the bill at the time service was initiated;
 - (C) failure to pay charges resulting from underbilling that is more than six months before the current billing, except for theft of service;

- (D) failure to pay disputed charges until a determination is made on the accuracy of the charges; or
 - (E) failure of a residential customer to pay for any charges other than for residential local telecommunications services, except for the nonpayment of long distance charges incurred after toll blocking was imposed.
- (6) **Suspension or disconnection on holidays or weekends.** An NCTU shall not suspend or disconnect on holidays or weekends, or the day before a holiday or weekend, unless NCTU personnel are available on those days to take payments and reconnect service. An NCTU may suspend or disconnect service on holidays or weekends, or the day before a holiday or weekend, when:
- (A) a dangerous condition exists;
 - (B) notice is not required pursuant to paragraph (4) of this subsection; or
 - (C) the customer requests disconnection.
- (7) **Suspension and disconnection notices.** Any suspension or disconnection notice issued by an NCTU to a customer must:
- (A) not be issued to the customer before the first day after the bill is due. Payment of the delinquent bill at an NCTU's authorized payment agency is considered payment to the NCTU;
 - (B) be a separate mailing or hand delivery or sent electronically if requested by the customer, with a stated date of suspension or disconnection and with the words "suspension notice," or

“disconnection notice,” or similar language prominently displayed on the notice;

- (C) have a suspension or disconnection date that is not less than ten days after the notice is issued;
 - (D) be in English and Spanish; and
 - (E) for residential customers, indicate the specific amount owed for local telecommunications services required to maintain basic local telecommunications service.
- (8) **Residential customer payment allocations.** Payment allocations related to basic local telecommunications service suspension or disconnection are as follows:
- (A) Payments shall first be allocated to basic local telecommunications service.
 - (B) If services are bundled, the rate of basic local telecommunications service shall be the NCTU’s charge for stand-alone basic local telecommunications service.
- (9) **Toll blocking.**
- (A) The NCTU may toll block a residential customer for the nonpayment of long distance charges.
 - (B) Access to toll-free numbers. Where technically capable, toll blocking shall allow access to toll-free numbers.

(C) Nondiscriminatory application. The NCTU shall not apply toll blocking in an unreasonably preferential, prejudicial, or discriminatory manner.

(D) Notice requirement. The NCTU shall notify the customer within 24 hours of initiating toll blocking.

(10) **Release of telephone line.**

(A) Upon a request to switch a current customer to another local service provider, the NCTU shall release, or cause to release, the customer's telephone line and number to the preferred provider in a manner to expedite the switch without disruption in service.

(B) Upon a request to switch a suspended customer to another local service provider, the NCTU shall release, or cause to release, the customer's telephone line and number within five days after the request is received. Upon a request to switch a disconnected customer to another local service provider, the NCTU shall release, or cause to release, the customer's telephone line within five days after the request is received.

(C) An NCTU shall not refuse to release a customer's or former customer's telephone line and number due to the non-payment of a bill.

(c) **NCTU implementation.** NCTUs shall implement this section no later than March 1, 2001.

§26.30. Complaints.

- (a) **Complaints to a certificated telecommunications utility (CTU).** A customer or applicant for service (complainant) may submit a complaint to a CTU either in person, by letter, telephone, or any other means determined by the CTU.
- (1) **Initial investigation.** The CTU shall investigate and advise the complainant of the results of the investigation within 21 days of receipt of the complaint. A CTU shall inform customers of the right to receive these results in writing.
- (2) **Supervisory review by the CTU.** If a complainant is not satisfied with the initial response to the complaint, the complainant may request a supervisory review by the CTU.
- (A) A CTU supervisor shall conduct the review and shall inform the complainant of the results of the review within ten days of receipt of the complainant's request for a review. A CTU shall inform customers of the right to receive these results in writing.
- (B) A complainant who is dissatisfied with a CTU's supervisory review shall be informed of:
- (i) the right to file a complaint with the commission;
 - (ii) the commission's informal complaint resolution process;
 - (iii) the following contact information for the commission:
 - (I) Mailing Address: Public Utility Commission of Texas,
Customer Protection Division, P.O. Box 13326,
Austin, Texas 78711-3326;

- (II) Phone Number: (512) 936-7120 or in Texas (toll-free) 1-888-782-8477;
- (III) FAX: (512) 936-7003;
- (IV) E-mail address: customer@puc.texas.gov;
- (V) Internet address: <http://www.puc.texas.gov>;
- (VI) Telecommunications Device for the Deaf (TTY): (512) 936-7136; and
- (VII) Relay Texas (toll-free): 1-800-735-2989.

(b) **Complaints to the commission.** Notwithstanding anything to the contrary, the commission may only hear a complaint of a retail or wholesale customer against a deregulated company or exempt carrier that is within the scope of the commission's authority provided in Public Utility Regulatory Act (PURA) §65.102.

(1) **Informal complaints.**

(A) The complaint to the commission should include:

- (i) The complainant's name, address, and telephone number.
- (ii) The name of the CTU or subsidiary company against which the complaint is being made.
- (iii) The customer's account or phone number.
- (iv) An explanation of the facts relevant to the complaint.
- (v) Any other information or documentation which supports the complaint.

- (B) Upon receipt of a complaint from the commission, a CTU shall investigate and advise the commission in writing of the results of its investigation within 21 days of the date forwarded by the commission.
 - (C) The commission shall:
 - (i) review the CTU's investigative results;
 - (ii) determine a resolution for the complaint; and
 - (iii) notify the complainant and the CTU in writing of the resolution.
 - (D) While any informal complaint process is ongoing at the commission:
 - (i) basic local telecommunications service may not be suspended or disconnected for the nonpayment of disputed charges; and
 - (ii) a customer is obligated to pay any undisputed portion of the bill.
 - (E) The CTU shall keep a record of any informal complaint forwarded to it by the commission for two years after the determination of that complaint.
 - (i) This record shall show the name and address of the complainant, and the date, nature, and adjustment or disposition of the complaint.
 - (ii) Protests regarding commission-approved rates or charges that require no further action by the CTU need not be recorded.
- (2) **Formal complaints.** If the complainant is not satisfied with the results of the informal complaint process, the complainant may file a formal complaint

with the commission. This process may include the formal docketing of the complaint as provided in the commission's Procedural Rules, §22.242 of this title (relating to Complaints).

§26.31. Disclosures to Applicants and Customers.

- (a) **Application.** Subsection (b)(4)(C)(viii) of this section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Regulatory Act (PURA) §52.154.
- (b) **Certificated telecommunications utilities (CTU).** These disclosure requirements shall apply only to residential customers and business customers with five or fewer customer access lines.
- (1) **Promotional requirements.** Promotions, including, but not limited to advertising and marketing, conducted by any CTU shall comply with the following:
- (A) If any portion of a promotion is translated into another language, then all portions of the promotion shall be translated into that language. Promotions containing a single informational line or sentence in another language to advise persons how to obtain the same promotional information in a different language are exempt from this requirement.
- (B) Promotions shall not be fraudulent, unfair, misleading, deceptive, or anti-competitive as prohibited by federal and state law.
- (2) **Prior to acceptance of service.** Each CTU shall provide the following information to applicants before any acceptance of service:

- (A) notice that the customer will receive the information packet described in paragraphs (3) and (4) of this subsection;
 - (B) an explanation of each product or service being offered;
 - (C) a description of how each charge will appear on the telephone bill;
 - (D) any applicable minimum contract service terms;
 - (E) disclosure of any and all money that must be paid prior to installation of new service or transfer of existing service to a new location and whether or not the money is refundable;
 - (F) disclosure of construction charges in accordance with §26.22 of this title (relating to Request for Service);
 - (G) information about any necessary change in the applicant's telephone number;
 - (H) disclosure of the company's cancellation policy; and
 - (I) information on whom to call and a working toll-free number for customer inquiries.
- (3) **Terms and conditions of service.** A CTU shall provide information regarding terms and conditions of service to customers in writing and free of charge at the initiation of service. Upon request, customers are entitled to receive an additional copy of the terms and conditions of service once annually free of charge. Any contract offered by a CTU must include the terms and conditions of service statement. A CTU may not offer a customer a contract or terms and conditions of service statement which waives the customer's rights under law or commission rule.

- (A) The information shall be:
- (i) sent to new customers before payment for a full bill is due;
 - (ii) clearly labeled to indicate it contains the terms and conditions of service;
 - (iii) provided in a readable format written in plain, non-technical language; and
 - (iv) provided in the same languages in which the CTU markets service to a customer.
- (B) The following information shall be included:
- (i) all rates and charges as they will appear on the telephone bill;
 - (ii) an itemization of any charges which may be imposed on the customer, including but not limited to, charges for late payments and returned checks;
 - (iii) a full description of each product or service to which the customer has subscribed;
 - (iv) any applicable minimum contract service terms and any fees for early termination;
 - (v) any and all money that must be paid prior to installation of new service or transfer of existing service to a new location and whether or not the money is refundable;
 - (vi) applicable construction charges in accordance with §26.22 of this title;
 - (vii) any necessary change in the applicant's telephone number;

- (viii) the company's cancellation policy;
 - (ix) a working toll-free number for customer inquiries; and
 - (x) the provider's legal or "doing business as" name used for providing telecommunications services in the state.
- (4) **Customer rights.** A CTU shall provide information regarding customer rights to customers in writing and free of charge at the initiation of service.
- (A) The information in subparagraph (C) of this paragraph shall be:
- (i) sent to new customers before payment for a full bill is due;
 - (ii) clearly labeled to indicate it contains the customer rights;
 - (iii) provided in a readable format written in plain, non-technical language; and
 - (iv) provided in the same languages in which the CTU markets service to a customer.
- (B) The CTU shall also provide:
- (i) the information in subparagraph (C) of this paragraph to customers at least every other year at no charge; or
 - (ii) a printed statement on the bill or a billing insert identifying the location of the information in subparagraph (C) of this paragraph. The statement shall be provided to customers every six months.
- (C) The following information shall be included:
- (i) the CTU's credit requirements and the circumstances under which a deposit or an additional deposit may be required, how

a deposit is calculated, the interest paid on deposits, and the time frame and requirement for return of the deposit to the customer and any other terms and conditions related to deposits;

- (ii) the time allowed to pay outstanding bills and the amount and conditions under which penalties may be applied to delinquent bills;
- (iii) grounds for suspension and/or disconnection of service;
- (iv) the steps that must be taken before a CTU may suspend and/or disconnect service;
- (v) the steps for resolving billing disputes with the CTU and how disputes affect suspension and/or disconnection of service;
- (vi) information on alternative payment plans offered by the CTU, including, but not limited to, payment arrangements and deferred payment plans, as well as a statement that a customer has the right to request these alternative payment plans;
- (vii) the steps necessary to have service restored and/or reconnected after involuntary suspension or disconnection;
- (viii) a customer's right to continue local service as long as full payment for local service is timely made;
- (ix) information regarding protections against unauthorized billing charges ("cramming") and selection of telecommunications utilities ("slamming") as required by §26.32 of this title

(relating to Protection Against Unauthorized Billing Charges (“Cramming”)) and §26.130 of this title (relating to Selection of Telecommunications Utilities), respectively;

- (x) the customer’s right to file a complaint with the CTU, the procedures for a supervisory review, and right to file a complaint with the commission regarding any matter concerning the CTU’s service. The commission’s contact information: Public Utility Commission of Texas, Customer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or in Texas (toll-free) 1-888-782-8477, fax (512) 936-7003, e-mail address: customer@puc.texas.gov, Internet address: www.puc.texas.gov, TTY (512) 936-7136, and Relay Texas (toll-free) 1-800-735-2989, shall accompany this information;
- (xi) the hours, addresses, and telephone numbers of CTU offices where bills may be paid and information may be obtained, or a toll-free number at which the customer may obtain this information;
- (xii) a toll-free telephone number or the equivalent (such as use of WATS or acceptance of collect calls) that customers may call to report service problems or make billing inquiries;
- (xiii) a statement that CTU services are provided without discrimination as to a customer’s race, color, sex, nationality,

religion, marital status, income level, source of income, or from unreasonable discrimination on the basis of geographic location;

- (xiv) a summary of the company's policy regarding the provision of credit history based upon the credit history of a customer's former spouse;
- (xv) notice of any special services such as readers or notices in Braille, if available, and the telephone number of the text telephone for the deaf or hard of hearing at the commission;
- (xvi) how customers with physical disabilities, and those who care for them, can identify themselves to the CTU so that special action can be taken to appropriately inform these persons of their rights; and
- (xvii) if a CTU is offering Lifeline, how information about customers who qualify for Lifeline may be shared between state agencies and their local phone service provider.

- (5) **Notice of changes.** A CTU shall provide customers written notice between 30 and 60 calendar days in advance of a material change in the terms and conditions of service or customer rights and shall give the customer the option to decline any material change in the terms and conditions of service and cancel service without penalty due to the material change in the terms and conditions of service. This paragraph does not apply to changes that are

beneficial to the customer such as a price decrease or mandated regulatory changes.

(6) **Right of cancellation.**

(A) A CTU shall provide all of its residential applicants and customers the right of rescission in accordance with applicable law.

(B) If a residential applicant or customer will incur an obligation exceeding 31 days, a CTU shall promptly provide the applicant or customer with the terms and conditions of service after the applicant or customer has provided authorization to CTU. The CTU shall offer the applicant or customer a right to cancel the contract without penalty or fee of any kind for a period of six business days after the terms and conditions of service are mailed or sent electronically to the applicant or customer.

(c) **Dominant certificated telecommunications utility (DCTU).** In addition to the requirements of subsection (b) of this section, the following requirements shall apply to residential customers and business customers with five or fewer customer access lines.

(1) **Prior to acceptance of service.** Before signing applicants or accepting any money for new residential service or transferring existing residential service to a new location, each DCTU shall provide to applicants information:

(A) about the DCTU's lowest-priced alternatives, beginning with the least cost option, and the range of service offerings available at the

applicant's location with full consideration to applicable equipment options and installation charges; and

(B) that clearly informs applicants about the availability of Lifeline service.

(2) **Customer rights.**

(A) If a DCTU provides its customers with the same information as required by subsection (b)(4)(C) of this section in the telephone directories provided to each customer pursuant to §26.128 of this title (relating to Telephone Directories), the DCTU shall provide a printed statement on the bill or a billing insert identifying the location of the information. The statement or billing insert shall be provided to customers every six months.

(B) The information required by subsection (b)(4)(C) of this section and this subsection shall be provided in English and Spanish; however, a DCTU is exempt from the Spanish language requirement if 10% or fewer of its customers are exclusively Spanish-speaking. If the DCTU is exempt from the Spanish language requirement, it shall notify all customers through a statement in both English and Spanish, in the customer rights, that the information is available in Spanish from the DCTU, both by mail and at the DCTU's offices.

(C) The information required in subsection (b)(4)(C) of this section shall also include:

(i) the customer's right to information about rates and services;

- (ii) the customer's right to inspect or obtain at reproduction cost a copy of the applicable tariffs and service rules;
- (iii) information on prohibitions for disconnection of local service for the ill and disabled;
- (iv) information on the availability of prepaid local telephone service as required by §26.29 of this title (relating to Prepaid Local Telephone Service (PLTS)); and
- (v) information regarding privacy issues as required by §26.121 of this title (relating to Privacy Issues).

(d) **Nondominant certificated telecommunications utility (NCTU) implementation.**

NCTUs shall implement this section no later than March 1, 2001.

§26.34. Telephone Prepaid Calling Services.

- (a) **Purpose.** The provisions of this section are intended to prescribe standards for the information a prepaid calling services provider shall disclose to customers about the rates and terms of service for prepaid calling services offered in this state.
- (b) **Application.** This section applies to any “telecommunications utility” as that term is defined in §26.5 of this title (relating to Definitions). This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier utility under Public Utility Regulatory Act (PURA) §52.154. This section also does not apply to a credit calling card in which a customer pays for a service after use and receives a monthly bill for such use.
- (c) **Liability.** The prepaid calling services company shall be responsible for ensuring, either through its contracts with its network provider, distributors and marketing agents or other means, that:
- (1) end-user purchased prepaid calling services remain usable in accordance with the requirements of this section; and
 - (2) compliance requirements of all disclosure provisions of this section are met.
- (d) **Definitions.** The following terms used in this section shall have the following meanings, unless the context indicates otherwise:

- (1) Access telephone number -- The number that allows a prepaid calling services customer to access the services of a telecommunications utility to place telephone calls.
- (2) Billing increment -- A unit of time used to charge customers for prepaid calling services.
- (3) Personal identification number (PIN) -- A number assigned as an authorization code that ensures system security for a prepaid calling services customer and allows the prepaid calling services company to track minutes used.
- (4) Prepaid calling services account -- An amount of money paid by a customer in advance to access the services of a telecommunications utility to place telephone calls. When the customer makes completed telephone calls, the value of the account decreases at a predetermined rate.
- (5) Prepaid calling card -- A card or any other device purchased to establish a prepaid calling services account.
- (6) Prepaid calling services -- Any telecommunications transaction in which:
 - (A) a customer pays in advance for telecommunications services;
 - (B) the customer's prepaid calling services account is depleted at a predetermined rate as the customer uses the service; and
 - (C) the customer must use a PIN and an access telephone number to use the telecommunications services.
- (7) Prepaid calling services company -- A company that provides prepaid calling or other telecommunications services to the public using its own

telecommunications network or resold telecommunications services, or distributors who purchase PINs or telecommunications services to resell to the end-user customer.

- (8) Recharge -- A transaction in which the value of the prepaid calling services account is renewed. The customer must be informed verbally or electronically of the new rates and surcharges at the time of recharge.
 - (9) Surcharge -- any fee or cost charged against a prepaid calling services account in addition to a per-minute rate or billing increment, including but not limited to connection, payphone, and maintenance fees.
- (e) **Billing requirements for prepaid calling services.**
- (1) Billing increments shall be defined and disclosed in the prepaid calling services company's published tariffs or price list on file with the commission and on any display at the point of sale as well as on any prepaid calling card, or on any prepaid calling card packaging.
 - (2) A prepaid calling services account may be decreased only for a completed call. Station busy signals and unanswered calls shall not be considered completed calls and shall not be charged against the account.
 - (3) A surcharge may not be levied more than once on a given call.
 - (4) Prepaid calling services companies may not reduce the value of a prepaid calling services account by more than the company's published domestic tariffs or price list on file with the commission and any surcharges filed at the commission. Domestic rates and surcharges shall be disclosed at the time of

purchase. Current international rates shall be disclosed at the time of purchase with an explanation, if applicable, that these prices may be subject to change.

- (5) The prepaid calling services account may be recharged by the customer at a different domestic rate from the original domestic rate or the last domestic recharge rate as long as the new domestic rate and any domestic or international surcharges conform with the company's published tariff or price list on file with the commission at the time of recharge. The customer must be informed of the rates at the time of recharge. A prepaid calling services company shall keep internal records of changes to its international rates and shall provide customers with the appropriate international rate information through a toll-free telephone number. International prepaid calling services rates shall continue to be updated annually in accordance with §26.89 of this title (relating to Information Regarding Rates and Services of Nondominant Carriers.)
- (6) Upon verbal or written request, prepaid calling services companies must be capable of providing customers the following call detail data information at no charge:
 - (A) Dialing and signaling information that identifies the inbound access telephone number called;
 - (B) The number of the originating telephone;
 - (C) The date and time the call originated;
 - (D) The date and time the call terminated;

- (E) The called telephone number; and
 - (F) The PIN and/or account number associated with the call.
 - (7) Prepaid calling services companies shall maintain call detail data records for at least two years.
- (f) **Written disclosure requirements for all prepaid calling services.**
- (1) **Information required on prepaid calling cards.** Cards must be issued with all information required by subparagraphs (A) and (B) of this paragraph in at least the same language in which the card is marketed. Bilingual cards are permitted as long as all the information in subparagraphs (A) and (B) of this paragraph is printed in both languages.
 - (A) At a minimum, a card must contain the following information printed in a legible font no smaller than eight-point:
 - (i) The toll-free number as required by subsection (i) of this section;
 - (ii) The maximum rate per minute shall be shown for local, intrastate, and interstate calls. International call prices shall be provided to the customer through a toll-free number printed on the card. If the cost for a one minute call is higher than the maximum rate per minute, it must be printed on the prepaid calling card; and
 - (iii) The words “VOID” or “SAMPLE” or sequential numbers, such as “999999999” on both sides of the card if the card was

produced as a “non-active” card so that it is obvious to the customer that the card is not useable. If the card is not so labeled, the card is considered active and the issuing company shall honor it.

- (B) At a minimum, a card must contain the following information printed in legible font no smaller than five-point:
- (i) The value of the card and any applicable surcharges shall be expressed in the same format (i.e. a card whose value is expressed in minutes shall express surcharges in minutes). If the value of a card is expressed in minutes, the minutes must be identified as domestic or international and the identification must be printed on the same line or next line as the value of the card in minutes;
 - (ii) The prepaid calling services company’s name as registered with the commission. A “doing business as” name may only be used if officially filed with the commission. The language shall clearly indicate that the company is providing the prepaid calling services;
 - (iii) Instructions on using the card correctly; and
 - (iv) Expiration date or policy, if the card cannot be used after a date certain. If an expiration date or policy is not disclosed on the card, it will be considered active indefinitely.

(2) **Information required at a point of sale.** All the following information shall be legibly printed on or in any packaging in a minimum eight point font and displayed visibly in a prominent area at the point of sale so that the customer may make an informed decision before purchase. Bilingual information may be made available as long as all the information below is printed in both languages.

- (A) A listing of applicable surcharges;
- (B) The company's name as registered with the commission. A "doing business as" name may only be used if officially filed with the commission. The language shall clearly indicate that the company is providing the prepaid calling card services;
- (C) The toll-free number as required by subsection (i) of this section;
- (D) The billing increment expressed in minutes or fractions of minutes and maximum charge per billing increment for prepaid calling card services for local, intrastate, interstate, and international calls will be provided to the customer through a toll-free number printed on the card;
- (E) The expiration policy, if the card cannot be used after a date certain. If an expiration date is not disclosed at the time of purchase, the prepaid calling services will be considered active until the prepaid calling services account is completely depleted;
- (F) The recharge policy, if applicable. If an expiration date is not disclosed at the time prepaid calling services are recharged, the

services will be considered active until the prepaid calling services account is completely depleted;

(G) The policy for rounding billing increments, if applicable;

(H) A statement that if a customer is unable to resolve a complaint with the company that the customer has the right to contact the state regulatory agency which has jurisdiction within the state where the prepaid calling services were purchased; and

(I) A statement that:

(i) Notifies a customer of the customer's extent of liability for lost or stolen cards, if there is liability; and

(ii) Warns a customer to safeguard the card against loss or theft.

(3) If a customer asks a prepaid calling services company how to file a complaint, the company must provide the following contact information: Public Utility Commission of Texas, Office of Customer Protection, P.O. Box 13326, Austin, Texas 78711-3326; phone: (512) 936-7120 or in Texas (toll-free) 1-888-782-8477; fax: (512) 936-7003; e-mail address: customer@puc.texas.gov; Internet address: www.puc.texas.gov; TTY: (512) 936-7136; and Relay Texas (toll-free): 1-800-735-2989.

(g) **Verbal disclosure requirements for prepaid calling services.** Prepaid calling services companies shall provide an announcement:

- (1) At the beginning of each call indicating the domestic minutes, billing increments, or dollars remaining on the prepaid calling services account or prepaid calling card; and
 - (2) When the prepaid account or card balance is about to be completely depleted. This announcement must be made at least one minute or billing increment before the time expires.
- (h) **Registration requirements for prepaid calling services companies.** All prepaid calling services companies shall register with the commission in accordance with §26.107 of this title (relating to (relating to Registration of Interexchange Carriers (IXCs), Prepaid Calling Services Companies (PPC), and Other Nondominant Telecommunications Carriers).
- (i) **Business and technical assistance requirements for prepaid calling services companies.** A prepaid calling services company shall provide a toll-free number with a live operator to answer incoming calls 24 hours a day, seven days a week or electronically voice record customer inquiries or complaints. A combination of live operators or recorders may be used. If a recorder is used, the prepaid calling services company shall attempt to contact each customer no later than the next business day following the date of the recording. Personnel must be sufficient in number and expertise to resolve customer inquiries and complaints. If an immediate resolution is not possible, the prepaid calling services company shall resolve the inquiry or complaint by calling the customer or, if the customer so requests, in writing within

ten working days of the original request. In the event a complaint cannot be resolved within ten working days of the request, the prepaid calling services provider shall advise the complainant in writing of the status and subsequently complete the investigation within 21 working days of the original request.

(j) **Requirements for refund of unused balances.** If a prepaid calling services company fails to provide services at the rates disclosed at the time of initial purchase or at the time an account is recharged, or fails to meet technical standards, the prepaid calling services company shall either refund the customer for any unused prepaid calling services or provide equivalent services.

(k) **Requirements when a prepaid calling services company terminates operations in this state.**

(1) When a prepaid calling services company expects to terminate operations in this state for any reason, the company shall at least 30 days prior to the termination of operations:

(A) Notify the commission in writing:

(i) That operations will be ending;

(ii) Of the date of the termination of operations; and

(iii) That the company certifies that the actions required by this subsection have been completed;

(B) Notify each customer at the address on file with the company, if applicable, that operations will be ending the date of the termination

of operations, and explain how customers may receive a refund or equivalent services for any unused services;

(C) Announce the termination of operations at the beginning of each call, including the date of termination and a toll-free number to call for more information; and

(D) Provide to customers via its toll-free customer service number the procedure for obtaining refunds and continue to provide this information for at least 60 days after the date the company terminates operations.

(2) Within 24 hours after ceasing operations, the prepaid calling services company shall deliver to the commission a list of names, if known, and account numbers of all customers with unused balances. For each customer, the list shall include the following:

(A) The identification number used by the company for billing and debit purposes; and,

(B) The unused time, stated in minutes, as applicable, and the unused dollar amount of the prepaid calling services account.

(1) **Date of compliance for prepaid calling card services companies.** All prepaid calling services offered for sale in the state of Texas and all prepaid calling services companies shall be in compliance with this rule within six months of the effective date of this section.

(m) **Compliance and enforcement.**

- (1) **Administrative penalties.** If the commission finds that a prepaid calling services company has violated any provision of this section, the commission shall order the company to take corrective action, as necessary, and the company may be subject to administrative penalties and other enforcement actions pursuant to the Public Utility Regulatory Act, Chapter 15.
- (2) **Enforcement.** The commission shall coordinate its enforcement efforts against a prepaid calling services company for fraudulent, unfair, misleading, deceptive, or anticompetitive business practices with the Office of the Attorney General in order to ensure consistent treatment of specific alleged violations.

§26.51. Reliability of Operations of Telecommunications Providers.

- (a) **Application.** Unless the context clearly indicates otherwise, in this section the term “utility,” insofar as it relates to telecommunications utilities, shall refer to local exchange companies that are facilities-based providers, as defined in §26.5 of this title (relating to Definitions). This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Regulatory Act (PURA) §52.154. This section also does not apply to the retail services of an electing company, as defined by PURA §58.002, or to the retail nonbasic services offered by a transitioning company, as defined by PURA §65.002.
- (b) **Emergency Operations Plan.** Each utility shall file with the commission a copy of its emergency operations plan or a comprehensive summary of its emergency operations plan by May 1, 2008.
- (1) **Filing requirements.** The filing shall include an affidavit from the utility’s operations officer indicating that all relevant operating personnel within the utility are familiar with the contents of the emergency operations plan; and such personnel are committed to following the plans and the provisions contained therein in the event of a system-wide or local emergency that arises from natural or manmade disasters, except to the extent deviations are appropriate under the circumstances during the course of an emergency. To the extent the utility makes changes in its emergency operations plan, the utility shall file the revised plan or a revision to the comprehensive summary

that appropriately addresses the changes to the plan no later than 30 days after such changes take effect.

(2) **Information to be included in the emergency operations plan.** Each emergency operations plan maintained by a utility shall include, but is not limited to, the following:

(A) A communications plan that describes the procedures for contacting the media, customers, and service users as soon as reasonably possible either before or at the onset of an emergency. The communications plan should also:

- (i) address how the utility's telephone system and complaint-handling procedures will be augmented during an emergency;
- (ii) identify key personnel and equipment that will be required to implement the plan when an emergency occurs;

(B) priorities for restoration of service;

(C) a plan for disaster recovery and continuity of operations;

(D) a plan to provide continuous and adequate service during a pandemic;
and

(E) a hurricane plan, including evacuation and re-entry procedures (for a utility providing service within a hurricane evacuation zone, as defined by the Governor's Division of Emergency Management).

(3) **Drills.** Each utility is required to train its operating personnel in the proper procedures for implementing its emergency plan. Each utility shall conduct or participate in an annual drill to test its emergency procedures unless it has

implemented its emergency procedures in response to an actual event within the last 12 months. If a utility is in a hurricane evacuation zone (as defined by the Governor's Division of Emergency Management), this drill shall also test its hurricane plan/storm recovery plan. The commission should be notified no later than 21 days prior to the date of the drill. Following the annual drill, the utility shall assess the effectiveness of the drill and modify its emergency operations plan as needed.

- (4) **Emergency contact information.** Each utility shall submit emergency contact information in a form prescribed by commission staff by May 1 of each calendar year. Notification to commission staff regarding changes to the emergency contact list shall be made within 30 days. This information will be used to contact utilities prior to and during an emergency event.
- (5) **Reporting requirements.** Upon request by the commission staff during a SOC inquiry or declared emergency event, affected utilities shall provide updates on the status of operations, outages and restoration efforts. Updates shall continue until all event-related outages are restored or unless otherwise notified by commission staff.
- (6) **Copy available for inspection.** A complete copy of the above plans shall be made available at the utility's main office for inspection by the commission or commission staff upon request.

(c) **Continuity of service.**

- (1) Every utility shall make all reasonable efforts to prevent interruptions of service. When interruptions occur, the utility shall restore service as soon as practicable, with priority of restoration taking into account such matters as the extent of repairs necessary, needs of the community and minimization of danger to the public, emergency personnel and the utility's workers.
- (2) Each utility shall make reasonable provisions to manage emergencies resulting from failure of service.
- (3) In the event of a national emergency or local disaster resulting in disruption of normal service, the utility may, in the public interest, deliberately interrupt service to selected customers to provide necessary service for the civil defense or other emergency service agencies temporarily until normal service to these agencies can be restored.

(d) **Record of interruption.** Except for momentary interruptions caused by automatic equipment operations, each utility shall keep a complete record of all interruptions, both emergency and scheduled. This record shall show the cause for interruptions, date, time, duration, location, approximate number of customers affected, and, in cases of emergency interruptions, the remedy and steps taken to prevent recurrence.

(e) **Report to commission.** The following guidelines are a minimum basis for reporting service interruptions. Any report of service interruption shall state the cause(s) of the interruption. Utilities should report major outages lasting less than four hours in

a timely manner or as soon as reasonably possible. Utilities shall notify the commission in a timely manner in writing of interruptions in service lasting four or more hours affecting:

- (1) 50% of the toll circuits serving an exchange;
- (2) 50% of the extended area service circuits serving an exchange;
- (3) 50% of a central office;
- (4) 20% or more of an exchange's access lines; or
- (5) any component of the 9-1-1 system that results in an outage to the 9-1-1 service.

(f) **Change in character of service.**

- (1) If any change is planned or made by the utility in the type of service rendered by the utility that would adversely affect the efficiency or operation of the customer equipment connected to the utility's network, the utility shall notify the affected customer at least 60 days in advance of the change or within a reasonable time as practicable.
- (2) This paragraph applies only to local exchange companies that are dominant carriers, as defined in §26.5 of this title. Where change in service requires dominant carriers to adjust or replace standard equipment, these changes shall be made to permit use under such changed conditions, adjustment shall be made by the dominant carrier without charge to the customers, or in lieu of such adjustments or replacements, the dominant carrier may make cash or

credit allowances based on the duration of the change and the degree of efficiency loss.

§26.52. Emergency Operations.

- (a) This section does not apply to the retail services of an electing company, as defined by the Public Utility Regulatory Act (PURA) §58.002, or to the retail nonbasic services offered by a transitioning company, as defined by PURA §65.002.

- (b) Each dominant certificated telecommunications utility's (DCTU) central office not equipped with permanently installed standby generators shall contain as a minimum four hours of battery reserve without voltage falling below the level required for proper operation of all equipment. It is also essential that all central offices have adequate provisions for emergency power. In offices without installed emergency power facilities, there shall be a mobile power unit available which can be delivered and connected on short notice.

- (c) In exchanges exceeding 5,000 lines, a permanent auxiliary power unit shall be installed.

§26.53. Inspections and Tests.

- (a) This section does not apply to the retail services of an electing company, as defined by Public Utility Regulatory Act (PURA) §58.002, or to the retail nonbasic services offered by a transitioning company, as defined by PURA §65.002.

- (b) Each dominant certificated telecommunications utility (DCTU) shall adopt a program of periodic tests, inspections, and preventive maintenance aimed at achieving efficient operation of its system and rendition of safe, adequate, and continuous service.

- (c) Each DCTU shall maintain or have access to test facilities enabling it to determine the operating and transmission capabilities of all equipment and facilities. The actual transmission performance of the network shall be monitored to determine if the service objectives in this chapter are met. This monitoring function shall include, but not be limited to, circuit order tests prior to placing trunks in service, routine periodic trunk maintenance tests, tests of actual switched trunk connections, periodic noise tests of a sample of customer loops in each exchange, and special transmission surveys of the network.

- (d) Each central office serving more than 300 customer access lines shall be equipped with a 1,000 +/- 20 hertz, one milliwatt test signal generator and a 900 Ohm balanced termination device wired to telephone numbers so that they may be accessed for dial

test purposes. Each DCTU shall advise the commission of the numbers assigned for these test terminations.

§26.73. Annual Earnings Report.

- (a) Each utility shall file with the commission, on commission-prescribed forms available on the commission's website, an earnings report providing the information required to enable the commission to properly monitor public utilities within the state. A deregulated or transitioning company is not required to file an earnings report with the commission unless the company is receiving support from the Texas High Cost Universal Service Plan.
- (1) Each utility shall report information related to the most recent calendar year as specified in the instructions to the report.
 - (2) Each utility shall file three copies of the commission-prescribed earnings report and shall electronically transmit one copy of the report no later than May 15th of each year.
 - (3) A utility with a rate proceeding pending before the commission on the due date of the annual earnings report, pursuant to the Public Utility Regulatory Act (PURA), Chapter 53, in which a rate filing package is required, or who had a final order issued in such a proceeding within the previous 12 months, is exempt from filing the report.
- (b) In addition to the utilities required to file under subsection (a) of this section, a telecommunications provider shall file with the commission the provider's annual earnings report if the provider:

- (1) Is not a local exchange company subject to a total support reduction plan under §26.403 of this title (relating to the Texas High Cost Universal Service Plan) or that has made an election under PURA §56.023(1);
 - (2) Serves greater than 31,000 access lines; and
 - (3) Receives support under a plan established under PURA §56.021(1).
- (c) A report filed under this section is confidential and not subject to disclosure under the Texas Government Code, Public Information Act, Chapter 552.

§26.79. Equal Opportunity Reports.

- (a) This section does not apply to a deregulated company that holds a certificate of operating authority or to an exempt carrier under Public Utility Regulatory Act (PURA) §52.154.
- (b) The term “minority group members,” when used within this section, shall include only members of the following groups:
- (1) African-Americans;
 - (2) American Indians;
 - (3) Asian-Americans;
 - (4) Hispanic-Americans and other Americans of Hispanic origin; and
 - (5) women.
- (c) Each utility that files any form with local, state or federal governmental agencies relating to equal employment opportunities for minority group members, (e.g., EEOC Form EEO-1, FCC Form 395, RUS Form 268, etc.) shall file copies of such completed form with the commission. If such form submitted by a multi-jurisdictional utility does not indicate Texas-specific numbers, the utility shall also prepare, and file with the commission, a form indicating Texas-specific numbers, in the same format and based on the numbers contained in the form previously filed with local, state or federal governmental agencies. Each utility shall also file copies of any other forms required to be filed with local, state or federal governmental agencies which contain the same or similar information, such as personnel data

identifying numbers and occupations of minority group members employed by the utility, and employment goals relating to them, if any.

- (d) Any additional information relating to the matters described in this section may be submitted at the utility's option.
- (e) Any utility filing with the commission any documents described in subsections (c) and (d) of this section shall file four copies of such documents with the commission's filing clerk under the project number assigned by the Public Utility Commission's Central Records Office for that year's filings. Utilities shall obtain the project number by contacting Central Records.
- (f) A utility that files a report with local, state or federal governmental agencies and that is required by this section to file such report with the commission must file the report by December 30 of the year it is filed with the local, state or federal agencies.
- (g) A utility that files a report pursuant to §26.85(f)(1) of this title (relating to Report of Workforce Diversity and Other Business Practices) satisfies the requirements of subsection (c) of this section.

§26.80. Annual Report on Historically Underutilized Businesses.

- (a) This section does not apply to a deregulated company that holds a certificate of operating authority or to an exempt carrier under Public Utility Regulatory Act (PURA) §52.154.
- (b) In this section, “historically underutilized business” has the same meaning as in Texas Government Code, §481.191, as it may be amended.
- (c) Every utility shall report its use of historically underutilized businesses (HUBs) to the commission on a form approved by the commission. A utility may submit the report on paper, or on paper and on a diskette (in Lotus 1-2-3 (*utility name.wk*) or Microsoft Excel (*utility name.xl*) format).
 - (1) Each small local exchange company and telephone cooperative utility shall on or before December 30 of each year submit to the commission a comprehensive annual report detailing its use of HUBs for the four quarters ending on September 30 of the year the report is filed, using the Small Utilities HUB Report form.
 - (2) Every utility other than those specified in paragraph (1) of this subsection, shall on or before December 30 of each year submit to the commission a comprehensive annual report detailing its use of HUBs for the four prior quarters ending on September 30 of the year the report is filed, using the Large Utilities HUB Report form.

- (3) Each utility wishing to report indirect HUB procurements or HUB procurements made by a contractor of the utility may use the Supplemental HUB report form.
 - (4) Each utility shall submit a text description of how it determined which of its vendors is a HUB.
 - (5) Each utility that has more than 1,000 customers in a state other than Texas, or that purchases more than 10% of its goods and services from vendors not located in Texas, shall separately report by total and category all utility purchases, all utility purchases from Texas vendors, and all utility purchases from Texas HUB vendors. A vendor is considered a Texas vendor if its physical location is situated within the boundaries of Texas.
 - (6) Each utility shall also file any other documents it believes appropriate to convey an accurate impression of its use of HUBs.
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- (d) This section may not be used to discriminate against any citizen on the basis of race, nationality, color, religion, sex, or marital status.
 - (e) This section does not create a new cause of action, either public or private.

§26.85. Report of Workforce Diversity and Other Business Practices.

- (a) **Purpose.** This section establishes annual reporting requirements for telecommunications utilities to report its progress and efforts to improve workforce diversity and contracting opportunities for small and historically underutilized businesses from its five-year plan filed pursuant to the Public Utility Regulatory Act (PURA) §52.256(b).
- (b) **Application.** This section applies to all telecommunications utilities, as defined in PURA §51.002(11), doing business in the State of Texas. This section does not apply to a deregulated company that holds a certificate of operating authority or to an exempt carrier under PURA §52.154.
- (c) **Terminology.** In this section, “small business” and “historically underutilized business” have the meanings assigned by the Texas Government Code §481.191.
- (d) **Annual progress report of workforce and supplier contracting diversity.** An “Annual Progress Report on Five-Year Plan to Enhance Supplier and Workforce Diversity” shall be filed annually with the commission. The report shall be filed on or before December 30 of each year for the four prior quarters ending on September 30 of the year the report is filed. A telecommunications utility that was not operational on January 1, 2000, and is required to file pursuant to PURA §52.256(b), shall file a plan in Project Number 21170 by December 30 of the year in which an annual report is due under this subsection.

- (e) **Filing requirements.** Four copies of the Annual Progress Report on Five-Year Plan to Enhance Supplier and Workforce Diversity shall be filed with the commission's filing clerk under the project number assigned by the Public Utility Commission's Central Records Office for that year's filings. Telecommunications utilities shall obtain the project number by contacting Central Records. A copy of the report shall also be sent to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and the African-American and Hispanic Caucus offices of the Texas Legislature.
- (f) **Contents of the report.** The annual report filed with the commission pursuant to this section may be filed using the Workforce and Supplier Contracting Diversity form or an alternative format and shall contain at a minimum the following information:
- (1) An illustration of the diversity of the telecommunications utility's workforce in the State of Texas at the time of the report. If the telecommunications utility is required to file an Equal Opportunity Report pursuant to §26.79 of this title (relating to Equal Opportunity Reports), a copy of that document may be attached to this report to satisfy the requirements of this paragraph.
 - (2) A description of the specific progress made under the workforce diversity plan filed pursuant to PURA §52.256(b), including:
 - (A) the specific initiatives, programs, and activities undertaken during the preceding year; and

- (B) an assessment of the success of each of those initiatives, programs, and activities.
 - (3) An explanation of the telecommunications utility's level of contracting with small and historically underutilized businesses in the State of Texas.
 - (4) The extent to which the telecommunications utility has carried out its initiatives to facilitate opportunities for contracts or joint ventures with small and historically underutilized businesses.
 - (5) A description of the initiatives, programs, and activities the telecommunications utility will pursue during the next year to increase the diversity of its workforce and contracting opportunities for small and historically underutilized businesses in the State of Texas.
- (g) This section may not be used to discriminate against any citizen on the basis of race, nationality, color, religion, sex, or marital status.
- (h) This section does not create a new cause of action, either public or private.
- (i) **Waiver.** A telecommunications utility that has less than sixteen employees in the State of Texas satisfies the requirements of this rule by completing subsection (f)(1) of this section.

§26.89. Nondominant Carriers' Obligations Regarding Information on Rates and Services.

- (a) All nondominant carriers, including those holding a certificate of operating authority or a service provider certificate of operating authority, may, but are not required to file the information set forth in paragraphs (1) - (3) of this subsection. This information shall be updated and kept current at all times.
- (1) A description of the type(s) of communications service provided;
 - (2) For each service listed in response to paragraph (1) of this subsection, the locations in the state (by city) in which service is originated and/or terminated. If service is provided statewide, either origination or termination, the carrier shall so state; and
 - (3) A tariff, schedule or list showing all recurring and nonrecurring rates for each service provided.
- (b) By June 30 of each year, each nondominant carrier that during the previous 12 months has not filed changes to the information filed pursuant to subsection (a) of this section shall file with the commission a letter informing the commission that no changes have occurred. An uncertificated nondominant carrier failing to file either this letter or the updates pursuant to subsection (a) of this section during the 12-month period ending June 30 may no longer be considered to be registered with the commission.
- (c) All nondominant carriers shall comply with the registration requirements in §26.107 of this title (relating to Registration of Interexchange Carriers (IXCs), Prepaid

Calling Services Companies (PPC), and Other Nondominant Telecommunications Carriers).

- (d) A nondominant carrier:
- (1) may, but is not required to maintain on file with the commission tariffs, price lists, or customer service agreements governing the terms of providing service;
 - (2) may cross-reference its federal tariff in its state tariff if its intrastate switched access rates are the same as its interstate switched access rate;
 - (3) may withdraw a tariff, price list, or customer service agreement not required to be filed or maintained with the commission under this section if it:
 - (A) files written notice of the withdrawal with the commission; and
 - (B) notifies its customers of the withdrawal and posts the current tariffs, price lists, or generic customer service agreements on its Internet website.
 - (4) is not required to obtain advance approval for a filing with the commission or a posting on the nondominant carrier's Internet website that adds, modifies, withdraws, or grandfathers a retail service or the service's rates, terms, or conditions;
 - (5) is not subject to any rule or regulatory practice that is not imposed on:
 - (A) a holder of a certificate of convenience and necessity serving the same area; or
 - (B) a deregulated company that:

- (i) has 500,000 or more access lines in service at the time it becomes a deregulated company; or
- (ii) serves an area also served by the nondominant telecommunications utility.

§26.123. Caller Identification Services.

- (a) **Application.** Unless the context clearly indicates otherwise, this section applies to all telecommunications utilities and providers of commercial mobile radio services otherwise herein referred to as “Providers of Caller ID.” This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Regulatory Act (PURA) §52.154.
- (b) **Caller identification services (“caller ID”).**
- (1) **Application.** This subsection shall not be construed to apply to:
- (A) an identification service that is used within the customer’s own system, including a central office based PBX-type system;
 - (B) information that is used on a public agency’s emergency telephone line or on a line that receives the primary emergency telephone number (9-1-1, or E9-1-1);
 - (C) information passed between telecommunications utilities, enhanced service providers, or other entities that is necessary for the set-up, processing, transmission, or billing of telecommunications or related services;
 - (D) information provided in compliance with applicable law or legal process; or
 - (E) an identification service provided in connection with a “700,” “800,” “888,” “900,” or similar access code telecommunications service.

(2) **Caller ID blocking.**

(A) Per-call blocking. All providers of caller ID shall provide per-call blocking at no charge to each telephone subscriber in the specific area in which caller ID is offered.

(B) Per-line blocking.

(i) A provider of caller ID may offer and provide per-line blocking to any customer at any time without any notification to the commission by the customer or the provider. The telecommunications provider is encouraged to notify the customer by mail of the effective date that per-line blocking will be instituted.

(ii) All providers of caller ID, with the exception of commercial mobile radio service providers, shall provide per-line blocking at no charge to a particular customer in the specific area in which caller ID is offered if the commission receives from the customer written certification that the customer has a compelling need for per-line blocking. Commercial mobile radio service providers shall provide per-line blocking to a particular customer in the specific area in which caller ID is offered if the commission receives from the customer written certification that the customer has a compelling need for per-line blocking.

- (I) When a customer requests per-line blocking through the commission, the provider of caller ID shall notify the customer by mail of the effective date that per-line blocking will be instituted.
 - (II) The commission may prescribe and assess fees and assessments from providers of caller ID in an amount sufficient to cover the additional expenses incurred by the commission in implementing the customer certification provisions of this clause.
 - (III) Reports, records, and information received under this clause by the commission or by a provider of caller ID are confidential and may be used only for the purposes of administering this subparagraph.
- (iii) A provider of caller ID may assess a service order charge relating to administrative costs to reinstate per-line blocking on a line, if the customer initially received the per-line block at no charge and then later asked the provider to remove it. The service charge authorized by this clause must be approved by the commission except where the provider of Caller ID is a commercial mobile radio service provider.
- (3) **Blocking failures and provider responsibilities.** When a provider of caller ID service to a customer originating a call becomes aware of a failure to block the delivery of calling party information from a line equipped with per-

line blocking or per-call blocking (and the caller had attempted to block the call), it shall report such failure to the Caller ID Consumer Education Panel, the commission, and the affected customer if that customer did not report the failure. The provider shall report such failure to the commission by contacting the commission liaison to the panel. A reasonable effort shall be made to notify the affected customer within 24 hours after the provider becomes aware of such failure.

- (4) **Public policy statement.** A provider of caller ID services shall inform all of its telephone subscribers of how the subscriber can unblock a line equipped with per-line blocking.
- (5) **Caller ID Consumer Education Panel.** The Caller ID Consumer Education Panel shall consist of one person appointed by the Governor, one person appointed by the chair of the commission, after consultation with the Texas Council on Family Violence, and one person appointed by the Public Counsel of the Office of Public Utility Counsel. A commission staff member shall serve as liaison between the panel and the commission.
 - (A) **Role of the Caller ID Consumer Education Panel.** The panel shall meet at least quarterly to:
 - (i) review the level of effort and effectiveness of consumer education materials;
 - (ii) investigate whether educational materials are distributed in as effective a manner as marketing materials; and

- (iii) develop recommendations for the commission related to the safe use of caller ID services, promotion and preservation of privacy for both the called and calling customers, and efforts to decrease the likelihood of harm resulting from caller ID services.
- (B) Reporting. The panel shall file an annual report with the commission detailing its findings and recommendations pursuant to subparagraph (A) of this paragraph. The commission may implement the recommendations of the panel, as well as those of any interested party, to the extent consistent with the public interest.
- (C) Evaluation of the panel. The commission shall evaluate the panel annually. The evaluation shall be conducted by an evaluation team appointed by the executive director of the commission. The commission liaison, members of the panel, and any other commission employee who works either directly or indirectly with the panel shall not be eligible to serve on the evaluation team. The evaluation team will report to the commission in open meeting each August of its findings regarding:
 - (i) the panel's work;
 - (ii) the panel's usefulness; and
 - (iii) if the panel is reimbursed for its costs by the state, the costs related to the panel's existence, including the cost of agency staff time spent in support of the panel's activities.

- (D) Duration of the panel. The panel shall disband on September 1, 1999, unless reauthorized by statute.
 - (E) Filing of caller ID materials. A provider of caller ID services shall provide all existing caller ID materials used as well as all future materials (when they become available) as follows:
 - (i) One copy of all such material shall be mailed to each member of the panel.
 - (ii) Two copies of all such material shall be filed in Central Records under Project Number 14505.
- (c) **Usage of calling party information in other services.** A dominant certificated telecommunications utility may not use calling party information to allow the called party to contact the calling party, when that calling party had indicated a desire for privacy in the initial call by blocking the delivery of his or her calling party information through the use of either a per-call or per-line blocking option, as those terms are defined in §26.5 of this title (relating to Definitions).

§26.128. Telephone Directories.

- (a) **Application.** The provisions of this section shall apply to all telephone directory providers to the extent outlined in this section. This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Regulatory Act (PURA) §52.154. For purposes of this section, the term “a private for-profit publisher” shall mean a publisher, other than a telecommunications utility or its affiliate, of a telephone directory that contains residential listings and that is distributed to the public at minimal or no cost.
- (b) **Telephone directory requirements for all providers.** Any private for-profit publisher and any telecommunications utility or its affiliate that publishes a residential telephone directory shall comply with the following requirements:
- (1) A telephone directory shall contain a listing of each toll-free and local telephone number for each of the following:
 - (A) state agencies;
 - (B) state public services; and
 - (C) elected state officials who represent all or part of the geographical area for which the directory contains listings.
 - (2) The directory shall include the information required in paragraph (1) of this subsection from the most current edition of the State of Texas Telephone Directory prepared and issued by the Department of Information Services and those modifications to the State of Texas Telephone Directory that are available upon request from the Department of Information Resources.

- (3) All publishers shall contact the Department of Information Resources in writing to determine which issue of the State of Texas Telephone Directory is most current and to obtain the modifications referred to in paragraph (2) of this subsection. The Department of Information Resources shall respond within 30 days of receiving the request.
- (4) The listings required by paragraph (1) of this subsection:
 - (A) may be located at the front of the directory or, if not located at the front of the directory, shall be referenced clearly on the inside page of the cover or on the first page following the cover before the main listing of residential and business telephone numbers;
 - (B) shall be labeled "GOVERNMENT OFFICES - STATE" in 24 point type;
 - (C) shall be bordered or shaded in such a way (on the three unbound sides with a border) that will distinguish the state listings from the other listings;
 - (D) shall be included in the directory at no cost to the agency or official;
 - (E) shall be in compliance with the categorization developed by the Records Management Interagency Coordinating Council. The categorization shall be available upon request from the Department of Information Resources. The listings shall be arranged in two ways:
 - (i) alphabetically by subject matter of state agencies; and
 - (ii) alphabetically by agency and public service name;

(F) shall include the telephone number for state government information:
(512) 463-4630.

(c) **Private for-profit publisher.** Any private for-profit publisher that publishes a residential telephone directory shall include in the directory a prominently displayed toll-free number and Internet mail address, established by the commission, through which a person may order a form to request to be placed on the Texas no-call list in order to avoid unwanted telemarketing calls.

(d) **Additional requirement for telecommunications utilities or affiliates that publish telephone directories.**

(1) A telecommunications utility or an affiliate of that utility that publishes a business telephone directory that is distributed to the public shall publish a listing of each toll-free and local telephone number of each elected official who represents all or part of the geographical area for which the directory contains listings.

(2) A telecommunications utility or an affiliate of that utility that publishes and causes to be distributed to the public a residential or business telephone directory shall prominently list in the directory the following information:
“The Specialized Telecommunications Assistance Program (STAP) provides financial assistance to help Texas residents with disabilities purchase basic specialized equipment or services needed to access the telephone network.
For more information, contact the Texas Department of Assistive and

Rehabilitative Services, the Office for Deaf and Hard of Hearing Services at (512) 407-3250 (Voice) or (512) 407-3251 (TTY) or www.dars.state.tx.us/dhhs/. This program is open to all individuals who are residents of Texas and have a disability.”

(e) **Requirements for telecommunications utilities found to be dominant.** This subsection applies to any telecommunications utility found to be dominant as to local exchange telephone service or its affiliate that publishes a directory on behalf of such telecommunications utility.

(1) **Annual publication.** Telephone directories shall be published annually. Except for customers who request that information be unlisted, directories shall list the names, addresses, and telephone numbers of all customers receiving local phone service, including customers of other certificated telecommunications utilities (CTUs) in the geographic area covered by that directory. Numbers of pay telephones need not be listed.

(2) **Distribution.** Upon issuance, a copy of each directory shall be distributed at no charge for each customer access line served by the telecommunications utility in the geographic area covered by that directory and, if requested, one extra copy per customer access line shall be provided at no charge. Notwithstanding any other law, a telecommunications provider or telecommunications utility may publish on its website a telephone directory or directory listing instead of providing for general distribution to the public of printed directories or listings. A provider or utility that publishes a

telephone directory or directory listing electronically shall provide a print or digital copy of the directory or listing to a customer on request. If a provider or utility chooses to publish its telephone directory or directory listings electronically, it shall notify its customers that the first print or digital copy requested by a customer in each calendar year will be provided at no charge to the customer. A printed or digital copy of each directory shall be furnished to the commission. A telecommunications utility shall also distribute copies of directories pursuant to any agreement reached with another CTU.

- (3) **Front cover requirements.** The name of the telecommunications utility, an indication of the area included in the directory, and the month and the year of issue shall appear on the front cover. Information pertaining to emergency calls such as for the police and fire departments shall appear conspicuously in the front part of the directory pages.
- (4) **Required instructions.** The directory shall contain instructions concerning:
 - (A) placing local and long distance calls on the network of the telecommunications utility for which the directory is issued;
 - (B) calls to the telecommunications utility's repair and directory assistance services, and locations; and
 - (C) telephone numbers of the business offices of the telecommunications utility as may be appropriate to the area served by the directory.
- (5) **Sample long distance rates.** It shall also contain a section setting out sample long distance rates within the long distance service area, if any, on the network of the telecommunications utility for which the directory is issued,

applicable at the time the directory is compiled for publication, with a clear statement that the published rates are effective as of the date of compilation.

(6) **Customer addresses.** At the customer's option the directory shall list either the customer's street address, a post office box number, or no address. A charge can be imposed upon those customers who desire more than one address listing.

(f) **References to other sections relating to directory notification.** The requirements of this section are in addition to the requirements referenced in paragraphs (1) - (4) of this subsection, or any other applicable section in this title. The applicability of each of the sections referenced in paragraphs (1) - (4) of this subsection is unaffected by the inclusion of the reference in this subsection.

- (1) Section 26.29 of this title (relating to Prepaid Local Telephone Service (PLTS)) concerning consumer education;
- (2) Section 26.31 of this title (relating to Disclosures to Applicants and Customers) concerning information to customers;
- (3) Section 26.121 of this title (relating to Privacy Issues) concerning notice of number delivery over 800, 888, and other toll-free prefixes and 900 services;
- (4) Section 26.130 of this title (relating to Selection of Telecommunications Utilities) concerning notice of customer rights.

(g) **Additional requirements.** The following requirements apply to telecommunications utilities found to be dominant as to local exchange telephone

service or its affiliate that publishes a directory on behalf of such telecommunications utility.

- (1) **Directory assistance.** Each telecommunications utility shall list each customer with its directory assistance within 72 hours after service connection (except those numbers excluded from listing in subsection (e)(1) of this section) in order that the directory assistance operators can provide the requested telephone numbers based on customer names and addresses.
- (2) **Non-assigned numbers.** All non-assigned telephone numbers in central offices serving more than 300 customer access lines shall be intercepted unless otherwise approved by the commission.
- (3) **Disconnected numbers.** Disconnected residence telephone numbers shall not be reassigned for 30 days and disconnected business numbers shall not be reassigned, unless requested by the customer, for 30 days or the life of the directory, whichever is longer, unless no other numbers are available to provide service to new customers.
- (4) **Incorrect listings.** If a customer's number is incorrectly listed in the directory and if the incorrect number is a working number and if the customer to whom the incorrect number is assigned requests, the number of the customer to whom the incorrect number is assigned shall be changed at no charge. If the incorrect number is not a working number and is a usable number, the customer's number shall be changed to the listed number at no charge if requested.

- (5) **Changing telephone numbers to a group of customers.** When additions or changes in plant or changes to any other CTU's operations necessitate changing telephone numbers to a group of customers, at least 30 days' written notice shall be given to all customers so affected even though the addition or changes may be coincident with a directory issue.

§26.133. Business and Marketing Code of Conduct for Certificated Telecommunications Utilities (CTUs).

- (a) **Purpose.** The purpose of this section is to establish a code of conduct in order to implement Public Utility Regulatory Act (PURA) §51.001 and §64.001 relating to fair business practices and safeguards against fraudulent, unfair, misleading, deceptive, or anticompetitive practices in order to ensure quality service and a competitive market.
- (b) **Application.** This section applies to all certificated telecommunications utilities (CTUs), as defined in §26.5 of this title (relating to Definitions), and CTU employees. This section also applies to all authorized agents of the CTU. This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Regulatory Act (PURA) §52.154.
- (c) **Communications.**
- (1) A CTU employee or authorized agent shall conduct communications with competitors and competitors' end-user customers with the same degree of professionalism, courtesy, and efficiency as that performed on behalf of their employer and end-user customers.
 - (2) A CTU employee or authorized agent, while engaged in the installation of equipment or the rendering of services (including the processing of an order for the installation, repair or restoration of service, or engaged in the actual repair or restoration of service) on behalf of a competitor shall not make

statements regarding the service of any competitor and shall not promote any of the CTU's services to the competitor's end-user customers.

(d) **Corporate advertising and marketing.**

- (1) A CTU, CTU employee or authorized agent shall not engage in false, misleading or deceptive practices, advertising or marketing with respect to the offering of any telecommunications service.
- (2) A CTU, CTU employee or authorized agent shall not falsely state or falsely imply that the services provided by the CTU on behalf of a competitor are superior when purchased directly from the CTU.
- (3) A CTU, CTU employee or authorized agent shall not falsely state or falsely imply that the services offered by a competitor cannot be reliably rendered, or that the quality of service provided by a competitor is of a substandard nature.
- (4) A CTU, CTU employee or authorized agent shall not falsely state nor falsely imply to any end-user customer that the continuation of any telecommunications service provided by the CTU is contingent upon ordering any other telecommunications service offered by the CTU. This section is not intended to prohibit a CTU from offering, or enforcing the terms of, any bundled or packaged service or any other form of pricing flexibility permitted by PURA and commission rules.

(e) **Information sharing and disclosure.**

- (1) Pursuant to the federal Telecommunications Act §222(a), each CTU has a duty to protect the confidentiality of proprietary information of, and relating to, other CTUs.
- (2) Pursuant to the federal Telecommunications Act §222(b), each CTU that receives or obtains proprietary information from another CTU for purposes of providing any telecommunications service shall use such information only for such purpose, and shall not use such information for its own marketing efforts or any other unauthorized purpose.

(f) **References to other Chapter 26 substantive rules.** The following commission rules also affect the conduct of CTU employees and authorized agents. All CTU employees and agents must be trained to comply with the specific substance of these rules which affect their employment responsibilities. Copies of specific commission rules shall be made available by the CTU to any employee or agent upon their request. The applicability of each of the following sections is unaffected by the reference in this section and does not relieve any CTU of its responsibility to abide by other applicable commission rules.

- (1) Section 26.21 of this title (relating to General Provisions of Customer Service and Protection Rules);
- (2) Section 26.31 of this title (relating to Disclosures to Applicants and Customers);

- (3) Section 26.32 of this title (relating to Protection Against Unauthorized Billing Charges (“Cramming”));
- (4) Section 26.37 of this title (relating to Texas No-Call List); and
- (5) Section 26.130 of this title (relating to Selection of Telecommunications Utilities).

(g) **Adoption and dissemination.**

- (1) Every CTU or authorized agent shall formally adopt and implement all applicable provisions of this section as company policy, or modify existing company policy as needed to incorporate all applicable provisions, within 90 days of the effective date of this section. A CTU shall provide a copy of its internal code of conduct required by this section to the commission upon request.
- (2) Every CTU or authorized agent shall disseminate the applicable provisions of this section to all existing and new employees and agents, and take appropriate actions to both train employees and enforce compliance with this section on an ongoing basis. Every CTU shall document every employee’s and agent’s receipt and acknowledgement of its internal policies required by this section, and every CTU shall make such documentation available to the commission upon request.

(h) **Investigation and enforcement.**

- (1) **Administrative penalties.** If the commission finds that a CTU has violated any provision of this section, the commission shall order the utility to take corrective action, as necessary, and the utility may be subject to administrative penalties and other enforcement actions pursuant to PURA, Chapter 15.
- (2) **Certificate revocation.** If the commission finds that a CTU is repeatedly in violation of this section, and if consistent with the public interest, the commission may suspend, restrict, or revoke the registration or certificate of the CTU.
- (3) **Coordination with the Office of the Attorney General.** The commission shall coordinate its enforcement efforts regarding the prosecution of fraudulent, misleading, deceptive, and anticompetitive business practices with the Office of the Attorney General in order to ensure consistent treatment of specific alleged violations.

§26.142. Integrated Services Digital Network (ISDN).

(a) **Purpose.** The commission finds that Integrated Services Digital Network (ISDN) is an alternative to “plain old telephone service.” At this time, ISDN is not a replacement for “plain old telephone service,” but rather ISDN provides the public switched telephone network with end-to-end digital connectivity. As such, ISDN should be made available to customers at a reasonable price, should be as accessible as possible to customers who want ISDN, should meet minimum standards of quality and consistency, and should be provided in such a manner that permits the dominant certificated telecommunications utility (DCTU) a reasonable opportunity to earn a reasonable return on invested capital. The provisions of this section are intended to establish the minimum criteria for the provision of ISDN.

(b) **Application.**

- (1) This section applies to DCTUs.
- (2) All DCTUs providing ISDN must do so in accordance with the requirements of this section.
- (3) An application to make ISDN available under this section shall comply with the requirements of §26.121 of this title (relating to Privacy Issues), and §26.123 of this title (relating to Caller Identification Services).

(c) **Availability of ISDN.**

- (1) Each DCTU shall make ISDN available to all customers in exchange areas having 50,000 or more access lines as of February 22, 1995. For purposes of this section, making ISDN available means providing ISDN to a customer within 30 days of that customer's request. Nothing in this section shall be construed as requiring a DCTU to provide ISDN to any customer prior to that customer's request for ISDN. The requirements of this paragraph shall not be met by making ISDN available to the customers of these exchange areas using a foreign exchange (FX) arrangement.
- (2) Each DCTU subject to the requirements of paragraph (1) of this subsection shall make ISDN available to all customers in exchange areas having less than 50,000 access lines as of February 22, 1995. The requirements of this paragraph may be met by making ISDN available to the customers of these exchange areas using a FX arrangement, if that is the most economically efficient means for the DCTU to make ISDN available.
- (3) It is the goal of the commission that ISDN should be made available to customers in all exchange areas not included in paragraphs (1) and (2) of this subsection. To this end, all telecommunications providers are encouraged to work together to make ISDN available to the customers of the DCTUs that do not have the facilities with which to make ISDN available to their customers. In the exchange areas not included in paragraph (1) of this subsection, the commission recognizes that ISDN may be made available using a FX

arrangement, if that is the most economically efficient means for the DCTU to make ISDN available.

(d) **ISDN standards and services**

(1) **ISDN standards.**

(A) At a minimum, all ISDN shall comply with National ISDN-1 and National ISDN-2 Standards as promulgated by Bellcore as of February 22, 1995.

(B) All ISDN shall be capable of providing end-to-end digital connectivity.

(2) **ISDN services.** At a minimum, the DCTU shall make available the ISDN services listed in the National ISDN-1 and National ISDN-2 Standards promulgated by Bellcore as of February 22, 1995.

(3) **Existing customers.** Existing customers as of February 22, 1995 may continue to receive ISDN irrespective of whether that ISDN complies with this subsection. Those customers may continue to receive such ISDN and shall be required to receive ISDN under the requirements of this subsection only if there is at least a 30 day customer-caused cessation of the ISDN service provided by the DCTU.

(4) **Waiver provision.** A DCTU may request, and the presiding officer may grant for good cause, modification or waiver of paragraphs (1) and/or (2) of this subsection. Such a request may be reviewed administratively. Any request for modification or waiver of the requirements of paragraphs (1)

and/or (2) of this subsection shall include a complete statement of the DCTU's arguments and factual support for that request.

(e) **Costing and pricing of ISDN.**

(1) **Costing of ISDN.** The cost standard for ISDN shall be the long run incremental cost (LRIC) of providing ISDN.

(2) **Pricing of ISDN.**

(A) Rates and terms.

(i) The rates and terms of ISDN, including basic rate interface (BRI), primary rate interface (PRI) and other ISDN services, shall be just and reasonable and shall not be unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive.

(ii) The annual revenues for ISDN, including BRI, PRI, and other ISDN services, shall be sufficient to recover the annual long run incremental cost and a contribution for joint and/or common costs, in the second year after it is first offered under the tariffs approved pursuant to this section.

(B) Foreign serving office (FSO) rate. Where the DCTU makes ISDN available by designating a foreign serving office (FSO) arrangement, the DCTU shall not charge an FSO rate.

(C) Foreign exchange (FX) rate.

- (i) Except as provided in clause (ii) of this subparagraph, where the DCTU is allowed to make ISDN available by designating a FX arrangement, the DCTU may charge an FX rate. A new FX rate shall be developed specifically for ISDN and this rate shall not be usage based. If the FX rate is priced at not less than 100% of LRIC and at not more than 105% of LRIC, there shall be a rebuttable presumption that the amount of joint and/or common costs recovered is appropriate.
 - (ii) Where the DCTU can make ISDN available to a customer by designating an FSO arrangement, the DCTU shall not charge a FX rate.
- (D) Pricing of BRI. To further the commission's policy that ISDN be made available at a reasonable price and that ISDN be as accessible as possible to those customers who want ISDN, BRI should be priced to recover its LRIC plus a minimal amount of joint and/or common costs. If BRI is priced at not less than 100% of LRIC and at not more than 105% of LRIC, there shall be a rebuttable presumption that the amount of joint and/or common costs recovered is appropriate.
- (E) Existing customers. Existing customers as of February 22, 1995 shall be subject to the rates set in compliance with this subsection, notwithstanding their choice to continue receiving ISDN under subsection (d) of this section.

- (3) **Pricing of ISDN for small LECs.** After a Class A DCTU is in compliance with this section, a small local exchange carrier (SLEC) as defined in §26.5 of this title (relating to Definitions) may price ISDN services at plus or minus 25% of the rates approved by the commission for that Class A DCTU providing the service within the State of Texas or at the rates for ISDN services approved by the commission for a similar SLEC. For the purpose of this section a similar SLEC is defined as a SLEC having a total number of access lines within 5,000 access lines of the applying SLEC.
- (f) **Requirements for notice and contents of application in compliance with this section.**
- (1) **Notice of application.** The presiding officer may require notice to the public as required by the commission's Procedural Rules, Chapter 22, Subchapter D, of this title and shall require direct notice to all existing ISDN customers. Unless otherwise required by the presiding officer or by law, the notice shall include at a minimum a description of the service, the proposed rates and other terms of the service, the types of customers likely to be affected if the application is approved, the proposed effective date for the application, and the following language: "Persons who wish to comment on this application should notify the commission by (specified date, ten days before the proposed effective date). Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Office of

Customer Protection at (512) 936-7120 or toll free at (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.”

- (2) **Contents of application for each DCTU not electing the SLEC pricing provisions of subsection (e)(3) of this section.** A DCTU that makes ISDN available shall file with the commission an application complying with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the Office of Regulatory Affairs and one copy shall be delivered to the Office of Public Utility Counsel. The application shall contain the following:
- (A) the proposed tariff sheets to implement the requirements of subsections (c), (d), and (e) of this section as required by subsection (g) of this section;
 - (B) a statement by the DCTU describing how it intends to comply with this section, including how it intends to comply with subsections (c), (d), and (e) of this section as required by subsection (g) of this section;
 - (C) a description of the proposed service(s) and the rates, terms, and conditions under which the service(s) are proposed to be offered and an explanation of how the proposed rates and terms of the service(s) are just and reasonable and are not unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive;

- (D) a statement by the DCTU of whether the application contains a rate change;
- (E) the proposed effective date of the service;
- (F) a statement detailing the method and content of the notice, if any, the utility has provided or intends to provide to the public regarding the application and a brief statement explaining why the DCTU's notice proposal is reasonable and that the DCTU's notice proposal complies with applicable law;
- (G) a copy of the text of the notice, if any;
- (H) a long run incremental cost study (LRIC) supporting the proposed rates;
- (I) projections of revenues, demand, and costs demonstrating that in the second year after the ISDN service is first offered under the tariffs approved pursuant to this section, the proposed rates will generate sufficient annual revenues to recover the annual long run incremental costs of providing the service, as well as a contribution for joint and/or common costs;
- (J) the information required by §26.121 and §26.123 of this title;
- (K) a statement specifying the exchanges in which the DCTU proposes to offer ISDN, the exchanges in which the DCTU proposes to offer ISDN using an FSO arrangement, the exchanges in which the DCTU proposes to offer ISDN using an FX arrangement, and the exchanges in which the DCTU does not propose to offer ISDN; and

(L) any other information which the DCTU wants considered in connection with the commission's review of its application.

(3) **Contents of application for a SLEC.** A SLEC that makes ISDN available and elects to price ISDN services under subsection (e)(3) of this section shall file with the commission an application complying with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the Office of Regulatory Affairs and one copy shall be delivered to the Office of Public Utility Counsel. The application shall contain the following:

- (A) contents of application required by paragraph (2)(A), (B), (D), (E), (F), (G), (J), (K), and (L) of this subsection;
- (B) a description of the proposed service(s) and the rates, terms, and conditions under which the service(s) are proposed to be offered and an affidavit from the general manager or an officer of the SLEC approving the proposed ISDN service;
- (C) a notarized affidavit from a representative of the SLEC:
 - (i) verifying the number of access lines, including the access lines of affiliates of such SLEC providing local exchange telephone service within the state, the SLEC has in service in the State of Texas;
 - (ii) verifying that the rates have been determined by the SLEC independently;

- (iii) including a statement affirming that the rates are just and reasonable and are not unreasonably preferential, prejudicial, or discriminatory; subsidized directly or indirectly by regulated monopoly services; or predatory, or anticompetitive; and
 - (D) an explanation demonstrating that the rates for the proposed ISDN service are within the guidelines provided by subsection (e)(3) of this section; and
 - (E) projections of the amount of revenues that will be generated by the ISDN service.

- (g) **Timing of and requirements for each DCTU's compliance with this section.**
 - (1) Each DCTU that is required to make ISDN available under subsection (c)(1) and (2) of this section shall file with the commission an application as described in subsection (f) of this section. Pursuant to subsection (f)(2)(A) and (B) of this section, the DCTU shall show its compliance with the requirements of:
 - (A) subsection (c)(1) and (2) of this section;
 - (B) subsections (d)(1)(A) and (B), (d)(2) and (d)(3) of this section or request a waiver pursuant to subsection (d)(4) of this section and provide sufficient justification for the good cause exception; and
 - (C) subsection (e)(2)(B), (C), and (D) of this section.

- (2) Each DCTU having ISDN tariffs in effect as of February 22, 1995 and that is not subject to paragraph (1) of this subsection shall file with the commission an application as described in subsection (f) of this section. Pursuant to subsection (f)(2)(A) and (B) of this section, the DCTU shall show its compliance with the requirements of:
- (A) subsections (d)(1)(A) and (B), (d)(2) and (d)(3) of this section or request a waiver pursuant to subsection (d)(4) of this section and provide sufficient justification for the good cause exception; and
 - (B) subsection(e)(2)(B), (C), and (D) of this section.
- (3) Rates proposed for services pursuant to paragraphs (1)(B) and (2)(A) of this subsection that are not tariffed as of the effective date of this section and rates proposed under paragraphs (1)(C) and (2)(B) of this subsection shall comply with the requirements of subsections (e)(1), (2)(A) and (E) of this section.
- (4) Each DCTU offering ISDN after the effective date of this section shall file with the commission an application as described in subsection (f) of this section. Pursuant to subsection (f)(2)(A) and (B) of this section the DCTU shall show its compliance with the requirements of:
- (A) subsections (d)(1)(A) and (B) and (d)(2) of this section or request a waiver pursuant to subsection (d)(4) of this section and provide sufficient justification for the good cause exception; and
 - (B) subsection (e)(1) and (2) of this section for each DCTU not electing the SLEC pricing provisions of subsection (e)(3) of this section or subsection (e)(3) of this section for a SLEC.

(h) **Commission processing of application.**

(1) **Administrative review.** An application considered under this section may be reviewed administratively unless the DCTU requests the application be docketed or the presiding officer, for good cause, determines at any point during the review that the application should be docketed.

(A) The operation of the proposed rate schedule may be suspended for 35 days after the effective date of the application. The effective date shall be no earlier than 30 days after the filing date of the application or 30 days after public notice is completed, whichever is later.

(B) The application shall be examined for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant shall be notified within ten working days of the filing date of the specific deficiency in its application, and the earliest possible effective date of the application shall be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any time deadlines shall be determined from the 30th day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date.

(C) While the application is being administratively reviewed, the staff of the Office of Regulatory Affairs and the staff of the Office of Public Utility Counsel may submit requests for information to the DCTU. Six copies of all answers to such requests for information shall be

filed with Central Records and one copy shall be provided the Office of Public Utility Counsel within ten days after receipt of the request by the DCTU.

- (D) No later than 20 days after the filing date of the sufficient application, interested persons may provide to the staff of the Office of Regulatory Affairs written comments or recommendations concerning the application. The staff of the Office of Regulatory Affairs shall and the Office of Public Utility Counsel may file with the presiding officer written comments or recommendations concerning the application.
- (E) No later than 35 days after the effective date of the application, the presiding officer shall issue an order approving, denying, or docketing the DCTU's application.
- (2) **Approval or denial of application.** The application shall be approved by the presiding officer if the proposed ISDN offered by the DCTU complies with each requirement of this section. If, based on the administrative review, the presiding officer determines that one or more of the requirements not waived have not been met, the presiding officer shall docket the application.
- (3) **Standards for docketing.** The application may be docketed pursuant to Procedural Rule §22.33(b) of this title (relating to Tariff Filings).
- (4) **Review of the application after docketing.** If the application is docketed, the operation of the proposed rate schedule shall be automatically suspended to a date 120 days after the applicant has filed all of its direct testimony and

exhibits, or 155 days after the effective date, whichever is later. Affected persons may move to intervene in the docket, and the presiding officer may schedule a hearing on the merits. The application shall be processed in accordance with the commission's rules applicable to docketed cases.

- (5) **Interim rates.** For good cause, interim rates may be approved after docketing. If the service requires substantial initial investment by customers before they may receive the service, interim rates shall be approved only if the DCTU shows, in addition to good cause, that it will notify each customer prior to purchasing the service that the customer's investment may be at risk due to the interim nature of the service.
- (i) **Commission processing of waivers.** Any request for modification or waiver of the requirements of this section shall include a complete statement of the DCTU's arguments and factual support for that request. The presiding officer shall rule on the request expeditiously.
- (j) **Limitation on filings and postings.** Notwithstanding any provision in this section to the contrary, the commission may not require a transitioning company to obtain advance approval for a filing with the commission or a posting on the company's Internet website that adds, modifies, withdraws, or grandfathers services under this section.

§26.143. Provision of Advanced Services in Rural Areas.

- (a) **Purpose.** The purpose of this section is to implement Public Utility Regulatory Act (PURA) §55.014 regarding the provision of advanced services to facilitate connection of end users to the Internet. This section is also intended to promote the policy, pursuant to PURA §51.001(g), that customers in all regions of this state have access to advanced telecommunications and information services.
- (b) **Application.** This section applies to a company electing under PURA Chapter 58 or a company that holds a certificate of operating authority (COA) or service provider certificate of operating authority (SPCOA). This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under PURA §52.154.
- (c) **Definitions.** The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.
- (1) **Advanced services provider** -- Any entity that offers or deploys advanced services, such as a holder of a certificate of convenience and necessity, a COA, a SPCOA, a cable company, a fixed wireless company, a satellite company, or any other provider of an advanced service.
 - (2) **Advanced telecommunications services** — Any retail telecommunications services that, regardless of transmission medium or technology, are capable of originating and receiving data transmissions for the purpose of accessing the Internet with a speed of at least 200 kilobits per second in the last mile in

one direction and with a speed of at least 128 kilobits a second in the last mile in the opposite direction.

- (3) **Advanced services** — Any retail services that, regardless of transmission medium or technology, are capable of originating and receiving data transmissions for the purpose of accessing the Internet with a speed of at least 200 kilobits per second in the last mile in one direction and with a speed of at least 128 kilobits a second in the last mile in the opposite direction. An advanced service includes any advanced telecommunications service.
- (4) **Company** — A telecommunications utility electing under PURA Chapter 58 or an entity that holds a COA or a SPCOA that provides advanced telecommunications services in urban areas of this state and provides local exchange telephone services in a rural area seeking provision of advanced services.
- (5) **Reasonably comparable or similar services** — Any services that meet the definition of an advanced service. Each advanced service is substitutable for any other advanced service.
- (6) **Rural area or rural service area** — Any community located in a county not included within any Metropolitan Statistical Area (MSA) boundary, as defined by the United States Office of Management and Budget, and any community within an MSA with a population of 20,000 or fewer not adjacent to the primary MSA city.
- (7) **Urban area or urban service area** — A municipality in this state with a population of more than 190,000.

(d) **Provision of advanced services.**

(1) **Requirement to provide an advanced service.**

(A) A company that provides advanced telecommunications services within the company's urban service areas shall, on a Bona Fide Retail Request for service, provide in rural areas served by the company advanced services that are reasonably comparable to the advanced telecommunications services provided in urban areas. The company shall provide such advanced services to the retail customer(s) seeking service through a Bona Fide Retail Request determined by the commission under this section:

- (i) at reasonably comparable prices, terms, and conditions to the prices, terms, and conditions for similar advanced telecommunications services provided by the company in proximate urban areas; and
- (ii) within 15 months after notice of the Bona Fide Retail Request for those services is published in the *Texas Register*.

(B) A company that provides advanced services in a rural area pursuant to a Bona Fide Retail Request shall provide advanced services to any subsequent retail customer(s) located within 14,000 26-gauge cable feet or its equivalent of the same central office as determined for the original Bona Fide Retail Request under this section:

- (i) at reasonably comparable prices, terms, and conditions to the prices, terms and conditions for similar advanced services provided by the company in proximate urban areas; and
 - (ii) within a reasonably comparable period of time as the period of time a company provides advanced telecommunications services to the company's subsequent retail advanced services customers located in proximate urban areas.
- (C) A company meets the requirement of providing a reasonably comparable advanced service if the company has provided the requested or a reasonably comparable advanced service in accordance with this section either:
 - (i) directly; or
 - (ii) through a business arrangement with an advanced services provider.
- (D) A company shall not be required to provide advanced services in a rural area when an advanced services provider is already providing advanced services in the rural area seeking an advanced service at the time of the Bona Fide Retail Request or within 15 months after notice of the Bona Fide Retail Request is published in the *Texas Register*. When determining if another provider is already providing an advanced service in a rural area, the commission shall, with information available to the public, consider:

- (i) whether an advanced services provider is actively marketing an advanced service in the rural area;
 - (ii) whether an advanced services provider is offering, directly or indirectly, installation and repair services for facilities and equipment necessary for the provision of the advanced service;
 - (iii) whether customers in the rural area are able to receive installation and repair services necessary for facilities and equipment;
 - (iv) whether the price of installation and repair services are reasonably comparable to prices in proximate urban areas; and
 - (v) whether an advanced services provider or distributor is located within or near the rural area.
- (E) The absence of an Internet service provider is a factor to be considered, but necessarily an exception, when requiring a company to provide advanced services in a rural area.
- (F) This section may not be construed to require a company to:
- (i) begin providing services in a rural area in which the company does not provide local exchange telephone service;
 - (ii) provide advanced services in a rural area of this state unless the company provides advanced telecommunications services in urban areas of this state; or

- (iii) provide a specific advanced service or technology in a rural area.
- (2) **Reasonably comparable price, terms, and conditions.** Advanced services provided by a company to a rural area pursuant to paragraph (1) of this subsection must be provided at prices, terms, and conditions that are reasonably comparable to the prices, terms, and conditions for similar advanced telecommunications services provided by the company in proximate urban areas.
 - (A) Reasonably comparable prices.
 - (i) If a monthly retail price for an advanced service is within 140% of the monthly retail price of the advanced telecommunications service offered in the same company's proximate urban service area, there shall be a rebuttable presumption that the price is reasonably comparable. A promotional rate for an advanced telecommunications service shall not be considered a monthly retail price if it is offered for less than four months.
 - (ii) When considering whether a price is reasonably comparable, the commission shall consider the distance, terrain, and features of the rural area seeking the advanced service.
 - (iii) A company may rebut the 140% presumption by showing that a higher price is necessary to recover its reasonable costs in providing the advanced service.

- (iv) Any interested person may rebut the 140% presumption by showing that a lower price will allow a company to recover its reasonable costs in providing the advanced service.
 - (v) Any company or interested person seeking to rebut the 140% presumption by showing that a higher or lower price is warranted must do so during the Commission Selection Proceeding under subsection (f)(4) of this section. Any dispute regarding a company's reasonably comparable price must be resolved during the Commission Selection Proceeding under subsection (f)(4) of this section.
- (B) Reasonably comparable terms and conditions.
- (i) Reasonably comparable terms and conditions are those terms and conditions applicable to the provision of advanced services in a rural area that are similar to the terms and conditions for advanced telecommunications services provided by the same company in proximate urban areas.
 - (ii) A company may require a term commitment for all persons seeking advanced services under a Bona Fide Retail Request. When considering whether a term commitment is reasonably comparable, the commission shall consider the distance, terrain, and features of the rural area seeking the advanced service.

(e) **Requesting competitive response for provision of advanced services.** A person(s) in a rural area seeking provision of an advanced service shall first submit a request for a competitive response for provision of those services. The request need not conform to the requirements of a Bona Fide Retail Request unless the requesting person(s) intends to seek provision of an advanced service under the Bona Fide Retail Request process in subsection (f) of this section.

(1) **Requesting advanced services.**

- (A) Any person(s) in a rural area seeking the provision of advanced services shall submit a written request to the commission for posting on the commission website.
- (B) The written request must include the name, address, and telephone number of a contact person.
- (C) Within five working days after receipt, the commission shall post the request for advanced services on the commission's website.
- (D) The commission shall post on the commission website:
 - (i) the name, address, and telephone number of the contact person;
 - (ii) the number of lines requested;
 - (iii) the number of customers requesting service;
 - (iv) the location of the rural area seeking the advanced service; and
 - (v) any other information the commission deems relevant.

(2) **Competitive response.**

- (A) After posting on the website, any company or advanced service provider may submit to the contact person a proposal to provide advanced services to the person(s) seeking advanced services.
- (B) Proposals must be submitted to the contact person within 50 days after the request was posted and provide for deployment of the advanced service within 15 months after the request was posted by the commission.
- (C) The person(s) seeking advanced services may negotiate with and select a provider based upon all of the proposals received.
- (D) If no advanced services provider has committed to provide advanced services to the person(s) submitting a request within 60 days after the request was posted by the commission, the contact person shall notify the commission. Upon notification, the contact person may ask that the commission establish a proceeding to determine that the request is a Bona Fide Retail Request.

(f) **Bona Fide Retail Request process.**

(1) **Commission proceeding to determine a Bona Fide Retail Request.**

- (A) Upon request under subsection (e)(2)(D) of this section, the commission shall determine whether a request is a Bona Fide Retail Request. This request may be processed administratively.

- (B) Any interested person may present written comments or objections, setting forth the basis of any facts in dispute, regarding whether the request is a Bona Fide Retail Request under this section.
- (2) **Bona Fide Retail Request.** A Bona Fide Retail Request must:
- (A) include a written request for at least 150 lines for service within 14,000 26-gauge cable feet or its equivalent of the same central office in a rural area;
 - (B) contain the name, address, telephone number, and signature of the retail customer(s) seeking service, the advanced service(s) requested, and the date of the request;
 - (C) contain the name, address, and telephone number of a contact person;
 - (D) state whether an advanced services provider is already providing, is contracted to provide, or is willing to provide advanced services in the rural area seeking the advanced service; and
 - (E) state whether an Internet service provider is providing or commits to provide functional Internet connectivity in the rural area seeking the advanced service.
- (3) **Notice of Bona Fide Retail Request.** After determination that a request is a Bona Fide Retail Request, the commission shall:
- (A) notify electronically or by mail all companies electing under PURA Chapter 58 and all COA and SPCOA holders of the Bona Fide Retail Request;

- (B) post notice of the Bona Fide Retail Request on the commission website; and
 - (C) publish notice of the Bona Fide Retail Request in the Texas Register.
 - (D) The commission shall include in the notification, post on the commission website, and publish in the Texas Register:
 - (i) the name, address, and telephone number of the contact person;
 - (ii) the number of lines requested;
 - (iii) the number of customers requesting service;
 - (iv) the location of the rural area; and
 - (v) any other information the commission deems relevant.
- (4) **Commission selection proceeding.** After notification of the Bona Fide Retail Request, the commission shall establish a proceeding to select the company or companies obligated to provide an advanced service.
- (A) **Company response.** Each company subject to this section for the rural area seeking advanced services shall submit a proposal for the provision of one or more advanced services to the retail customer(s) seeking service through the Bona Fide Retail Request determined by the commission under this section.
 - (i) Each company shall submit its proposal within 30 days after publication of the Bona Fide Retail Request notice in the Texas Register.

- (ii) All proposals shall comply with the requirements of subsection (d) of this section.
 - (iii) A company required to submit a proposal may contest the obligation to serve by setting forth the basis of its challenge. The company must, however, file its proposal as required by this subsection.
- (B) Company response exemption. A company subject to this section for the rural area seeking advanced services is presumed to be exempt from the requirements of this subsection and is not required to submit a proposal for the provision of advanced services if, at the time the Bona Fide Retail Request is published in the *Texas Register*, the company served fewer than 150 local exchange telephone service lines within 14,000 26-gauge cable feet or its equivalent of the same central office as determined for the Bona Fide Retail Request under this section in the last month of the most recent quarterly reporting period submitted to the commission pursuant to Local Government Code, Chapter 283.
- (C) Commission determination. Within 150 days after notice of the Bona Fide Retail Request is published in the *Texas Register*, the commission shall determine the selected company or companies obligated to serve the retail customer(s) seeking service through the Bona Fide Retail Request determined by the commission under this section.

- (D) Selection criteria. When selecting the company or companies obligated to serve, among other factors the commission may deem relevant, the commission shall consider:
- (i) the overall quality of telecommunications service in the rural area;
 - (ii) the characteristics and attributes of network facilities in the rural area;
 - (iii) the terrain and geographic features of the rural area;
 - (iv) the number of local exchange telephone service providers in the rural area;
 - (v) the population and population density of the rural area;
 - (vi) the number of local exchange telephone service customers the company serves in the rural area;
 - (vii) the manner or method by which the company provides local exchange telephone service in the rural area;
 - (viii) whether a company that provides local exchange service through resale or unbundled network element platform can purchase advanced services through resale or unbundled network element platform in the rural area;
 - (ix) the extent to which the selection may prohibit or have the practical effect of prohibiting the ability of any company to provide local exchange telephone service in rural areas;

- (x) a company's planned response for subsequent requests for service within 14,000 26-gauge cable feet or its equivalent of the same central office as determined for the original Bona Fide Retail Request under this section;
- (xi) the method by which the company would provide an advanced service in the rural area; and
- (xii) whether a company provides service in proximate urban areas to the rural area seeking advanced services.

§26.211. Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges.

- (a) **Application.** The provisions of this section apply to incumbent local exchange companies (ILECs), as defined by §26.5 of this title (relating to Definitions). This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under PURA §52.154.
- (b) **Purpose.** The purpose of this section is to establish procedures for pricing flexibility for services subject to competition and a process for the review of pricing flexibility applications.
- (c) **Pricing flexibility.**
- (1) The types of pricing flexibility that an incumbent local exchange company (ILEC) may request are set forth in subparagraphs (A)-(C) of this paragraph.
- (A) Banded rates. If an ILEC is granted the authority to charge banded rates, the minimum rates shall yield revenues that are equal to or greater than 105% of the long run incremental cost of the service in the geographic market in which the service will be provided. When an ILEC is granted the authority to charge banded rates, the ILEC shall file a tariff showing the minimum and maximum rates and specifying its current rate. The current rate, as specified in the ILEC's tariff, shall be applied uniformly to all customers of the service in each exchange for which the commission has approved banded rates. If the ILEC desires to charge a rate different from its

current rate, but between the minimum and maximum rates, it shall file a revised tariff on or before the effective date of the rate change.

The minimum and maximum rates may only be changed as provided for in the Public Utility Regulatory Act, Chapter 53, Subchapters C and D, or G.

- (B) Detariffing. If an ILEC is granted the authority to detariff a service, the ILEC shall maintain at the commission a current price list for the service, and the commission shall retain authority to regulate the quality, terms and conditions of the detariffed service, other than rates. The commission may determine the appropriate ratemaking treatment of any revenues from or costs of providing a detariffed service in a proceeding under the Public Utility Regulatory Act, Chapter 53, Subchapters C and D, or G.
 - (C) Other types of pricing flexibility. If an ILEC is granted the authority to engage in a type of pricing flexibility that the commission finds to be in the public interest other than those specified in subparagraphs (A)-(B) of this paragraph, that pricing flexibility shall be offered under such terms and conditions as the commission orders.
- (2) ILECs have the authority to enter into customer-specific contracts for those services specified in subsection (d) of this section. For those services, ILECs may apply to the commission pursuant to this subsection to obtain a type of pricing flexibility specified in paragraph (1) of this subsection other than customer-specific contracts. For other services, ILECs may apply to the

commission pursuant to this subsection to obtain any type of pricing flexibility specified in paragraph (1) of this subsection. However, nothing in this subsection shall permit an ILEC to obtain pricing flexibility for basic local telecommunications service, including local measured service, or for any service that includes as a component a service not subject to significant competitive challenge. Additionally, nothing in this subsection shall permit an ILEC to enter into customer-specific contracts or to obtain detariffing with respect to message telecommunications services, switched access services, or wide area telecommunications service.

- (3) An application for pricing flexibility filed under this paragraph shall:
 - (A) include a statement of the ILEC's intention to use the procedures established in this subsection;
 - (B) specify the type of pricing flexibility requested and, if the type of pricing flexibility requested is either banded rates or some other type of pricing flexibility pursuant to paragraph (1)(C) of this subsection that involves rate-setting:
 - (i) state the proposed rates, and if the type of pricing flexibility is banded rates, state the maximum and minimum rates;
 - (ii) include detailed documentation demonstrating that the minimum rates yield revenues that are equal to or greater than 105% of the long run incremental cost of the service in the geographic market in which the service will be provided;

- (iii) demonstrate that the rates are not unreasonably preferential, prejudicial or discriminatory;
 - (iv) demonstrate that the rates are such that the service identified pursuant to subparagraph (C) of this paragraph will not be subsidized directly or indirectly by regulated monopoly services; and
 - (v) demonstrate that the rates are not predatory or anticompetitive;
- (C) identify the service for which the ILEC is requesting pricing flexibility, including each component thereof, and provide functional and technical descriptions of the service, including:
- (i) the functions that the service is intended to perform for the customer;
 - (ii) the types of equipment used to provide the service (including, but not limited to, transmission facilities, switching facilities, customer equipment, software functions, and protocol);
 - (iii) the network configurations used to provide the service; and
 - (iv) schematics;
- (D) identify each service that is not subject to significant competitive challenge but that, at the time the ILEC files its application for pricing flexibility, the ILEC intends to provide as a tariffed adjunct to the service identified in subparagraph (C) of this paragraph and, for each such service, provide:
- (i) functional and technical descriptions; and

- (ii) citations to the tariff provisions pursuant to which each such service will be provided;
- (E) designate the exchange(s) as to which the ILEC is seeking pricing flexibility;
- (F) include a map or maps of the exchange(s) designated pursuant to subparagraph (E) of this paragraph that can be coordinated with the official commission boundary maps;
- (G) describe the products or services known to the ILEC that are currently available in the exchange(s) designated pursuant to subparagraph (E) of this paragraph, and that are the same, equivalent, or substitutable for the service identified pursuant to subparagraph (C) of this paragraph, and identify the providers of those products or services;
- (H) with respect to the products or services described pursuant to subparagraph (G) of this paragraph, discuss:
 - (i) the number and size of telecommunications utilities or other persons providing such products or services;
 - (ii) the extent to which such products or services are available;
 - (iii) the ability of customers to obtain such products or services at rates, terms, and conditions comparable to those that the ILEC will offer;
 - (iv) the ability of telecommunications utilities or other persons to make such products or services readily available at rates,

terms, and conditions comparable to those that the ILEC will offer; and

- (v) the existence of any significant barrier to the entry or exit of a provider of such products or services;
- (I) demonstrate that the level of competition with respect to all components of the ILEC's service identified pursuant to subparagraph (C) of this paragraph represents a significant competitive challenge within the exchange(s) designated pursuant to subparagraph (E) of this paragraph that warrants the pricing flexibility specified pursuant to subparagraph (B) of this paragraph;
- (J) demonstrate that the service identified pursuant to subparagraph (C) of this paragraph is not basic local telecommunications service, including local measured service;
- (K) if the type of pricing flexibility requested pursuant to subparagraph (B) of this paragraph is customer-specific pricing or detariffing, demonstrate that the service identified pursuant to subparagraph (C) of this paragraph is not message telecommunications service, switched access service, or wide area telecommunications service;
- (L) to prevent the subsidization of the service identified pursuant to subparagraph (C) of this paragraph with revenues from regulated monopoly services, propose mechanisms to recover costs that may not be identified and recovered in a long run incremental cost study, including but not limited to costs associated with advertising,

- unsuccessful bids, and all items of plant used in the provision of the service;
- (M) identify and address the impact that approval of the application for pricing flexibility may have on universal service;
 - (N) for any type of pricing flexibility other than detariffing, include proposed tariffs and identify any tariff language that restricts the resale, sharing, or joint use of the service identified pursuant to subparagraph (C) of this paragraph and any component thereof and demonstrate why such restrictive tariff language is consistent with the policy established in the Public Utility Regulatory Act §52.001; and
 - (O) include any other information that the ILEC wants considered in connection with the review of its application.
- (4) The commission shall allow an incumbent LEC that is not a Tier 1 LEC as of September 1, 1995, at that company's option, to adopt the cost studies approved by the commission for a Tier 1 LEC.
- (5) An application for pricing flexibility shall be docketed and assigned to a presiding officer. No later than ten working days after the filing of an application for pricing flexibility, the presiding officer shall issue an order scheduling a prehearing conference for the purposes of determining notice requirements, establishing a procedural schedule, and addressing other matters as may be appropriate. The commission shall make a final decision no later than 180 days after the completion of notice, as ordered by the presiding officer. However, this 180-day period shall be extended two days

for each one day of actual hearing on the merits of the case that exceeds 15 days. The presiding officer or commission, upon a showing of good cause relating to the applicant's failure or refusal to prosecute, including but not limited to the applicant's unreasonable resistance to discovery, may further extend the timeline, provided that the order shall specifically identify the facts found to constitute good cause. This deadline may be expressly waived by the applicant.

- (6) For ILECs with less than 31,000 access lines, the commission shall not be limited under paragraph (7)(D)(i)-(x) of this subsection to considering only competition within the exchange(s) where the ILEC will provide the service. Pursuant to paragraph (3)(O) of this subsection, an ILEC with less than 31,000 access lines may provide information that addresses the criteria of paragraph (3)(G)-(I) of this subsection with respect to products or services available outside the exchange(s) designated in paragraph (3)(E) of this subsection.
- (7) An application for pricing flexibility shall be approved if, after an evidentiary hearing, the commission finds, based on the evidence, that:
 - (A) no service for which pricing flexibility is sought is basic local telecommunications service, including local measured service;
 - (B) no service for which the ILEC requests detariffing of rates is message telecommunications service, switched access service, or wide area telecommunications service

- (C) no service for which pricing flexibility is sought includes a component that is not subject to significant competitive challenge;
- (D) the grant of pricing flexibility for the service identified pursuant to paragraph (3)(C) of this subsection within the exchange(s) designated pursuant to paragraph (3)(E) of this subsection is appropriate to allow the ILEC to respond to a significant competitive challenge, based upon consideration of the following:
 - (i) the number and size of telecommunications utilities or other persons providing the same, equivalent, or substitutable service within the exchange(s) designated pursuant to paragraph (3)(E) of this subsection;
 - (ii) the extent to which the same, equivalent, or substitutable service is available within the exchange(s) designated pursuant to paragraph (3)(E) of this subsection;
 - (iii) the ability of customers to obtain the same, equivalent, or substitutable services at comparable rates, terms, and conditions within the exchange(s) designated pursuant to paragraph (3)(E) of this subsection;
 - (iv) the ability of telecommunications utilities or other persons to make the same, equivalent, or substitutable service readily available at comparable rates, terms, and conditions within the exchange(s) designated pursuant to paragraph (3)(E) of this subsection;

- (v) the existence of any significant barrier to the entry or exit of a provider of the same, equivalent or substitutable services within the exchange(s) designated pursuant to paragraph (3)(E) of this subsection;
 - (vi) whether there are mechanisms to minimize potential anti-competitive practices, to the extent that any such practice has been identified in the record;
 - (vii) whether there are mechanisms to prevent the subsidization of the service with revenues from regulated monopoly services;
 - (viii) whether the ability of the ILEC to flexibly price the service within the designated exchange(s) would have any significant impact on universal service;
 - (ix) whether the type of pricing flexibility requested is appropriate in light of the level and nature of competition within the exchange(s) where the ILEC will provide the service; and
 - (x) any other relevant information contained in the record;
- (E) the rates, if the type of pricing flexibility granted is either banded rates or some other type of pricing flexibility pursuant to paragraph (1)(C) of this subsection that involves rate-setting, are just and reasonable and:
- (i) yield revenues that are equal to or greater than 105% of the long run incremental cost of the service in the geographic market in which the service will be provided;

- (ii) are not unreasonably preferential, prejudicial or discriminatory;
 - (iii) are such that the service will not be subsidized directly or indirectly by regulated monopoly services; and
 - (iv) are not predatory or anticompetitive.
- (8) Nothing in this subsection is intended to prevent the presiding officer from recommending, or the commission from approving based on the record evidence, relief other than that requested in the application.

(d) **Customer-specific contracts.**

An ILEC shall have the authority to enter into customer-specific contracts for:

- (1) central office based PBX-type services for systems of 200 stations or more, as those services compete with customer premises equipment provided by PBX vendors;
- (2) billing and collection services;
- (3) high-speed private line services of 1.544 megabits or greater;
- (4) customized services that are unique because of size or configuration, provided that such customized services shall not include basic local telecommunications service, including local measured service, or message telecommunications services, switched access services, or wide area telecommunications service; and
- (5) any other service for which the commission has authorized the ILEC to enter into customer-specific contracts pursuant to this section.

- (e) **Subsequent review.** The commission may modify, or revoke, upon notice and hearing, the authorization of any type or types of pricing flexibility granted pursuant to this section.

- (f) **Severability.** If any provision of this section or the application thereof to any person or any circumstances is held invalid, such invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application. It is the intent of the commission that the provisions of this section are severable.

§26.225. Requirements Applicable to Nonbasic Services For Chapter 58 Electing Companies.

- (a) **Application.** This section applies to any electing company as the term is defined in the Public Utility Regulatory Act (PURA) §58.002. Other sections applicable to an electing company include, but are not limited to, §26.224 of this title (relating to Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies), §26.226 of this title (relating to Requirements Applicable to Pricing Flexibility for Chapter 58 Electing Companies), and §26.227 of this title (relating to Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58 Electing Companies.). PURA §55.003 and §55.004 do not apply to the retail services offered by an electing company, or to the retail nonbasic services offered by a transitioning company, as defined by PURA §65.002.
- (b) **Purpose.** The purpose of this section is to establish requirements for nonbasic services.
- (c) **Nonbasic services.**
- (1) Consistent with PURA §58.151 and §58.024, these services are nonbasic services:
- (A) flat rate business local exchange telephone service, including primary directory listings and the receipt of a directory, and any applicable mileage or zone;

- (B) business tone dialing service;
- (C) service connection for all business services;
- (D) direct inward dialing (DID) for basic business services;
- (E) public pay telephone services, 0+ and 0- operator services and directory assistance services;
- (F) call forwarding, call return, caller identification, call waiting and other custom calling services and call control options, except that residential call waiting is a basic network service until July 1, 2006;
- (G) speed dialing and three-way calling;
- (H) central office based PBX-type services;
- (I) billing and collection services, including installment billing and late payment plans for electing company customers;
- (J) integrated services digital network (ISDN) services;
- (K) new services;
- (L) 1-plus intraLATA message toll service (MTS);
- (M) services described in the WATS tariff of an electing company as the tariff existed on January 1, 1995;
- (N) 800 service and foreign exchange service;
- (O) private line services and special access services;
- (P) paging services and mobile services (IMTS);
- (Q) 911 service provided to a local authority, if the service is available from a provider other than the electing company;

- (R) all other services subject to the commission's jurisdiction that are not specifically classified as basic network services in PURA §58.051;
 - (S) any basic network service reclassified by the commission as a nonbasic service pursuant to PURA §58.024.
- (2) Consistent with PURA §58.155, neither interconnection to competitive providers nor interconnection for commercial mobile service providers is addressed in this section.
- (d) **Substantive requirements.** An electing company that seeks to introduce or modify rates, terms or conditions of a nonbasic service tariff shall follow the substantive requirements in this section and the procedural requirements in §26.227 of this title. Additionally, an electing company that seeks to flexibly price a nonbasic service shall follow the requirements in §26.226 of this title.
- (1) **Pricing standards.** The price of a nonbasic service may not be preferential, prejudicial, discriminatory, predatory, or anticompetitive.
- (A) Price ceilings. This subparagraph specifies the price ceilings for certain nonbasic services. Except as specified in this subparagraph, nonbasic services have no price ceiling.
- (i) Until September 1, 2005, a nonbasic service listed in subsection (c)(1)(A)-(D) of this section shall be priced at or below the price in effect on September 1, 1999.
 - (ii) Until September 1, 2005, a Basic Rate Interface (BRI) ISDN service, which comprises up to two 64 Kbps B-channels and

one 16 Kbps D-channel, shall be priced at or below the price in effect on September 1, 1999.

- (iii) An electing company shall provide to a residential customer the first three local directory assistance inquiries in a monthly billing cycle at a maximum price of zero dollars (\$.00) until July 1, 2006.
 - (iv) Consistent with PURA §58.302, switched access services shall be priced at or below the lesser of the rates in effect on September 1, 1999, or the applicable rates described in PURA §58.301 as those rates were further reduced when the Texas universal service fund was implemented on July 1, 2000.
- (B) Price floors. A price that is set at or above the long run incremental cost of providing a service is presumed not to be a predatory price. The long run incremental cost of a nonbasic service must be established before the price floor of a nonbasic service can be determined, pursuant to PURA §58.152. Establishment of a long run incremental cost requires commission approval of a cost study prepared by an electing company pursuant to the standards in §26.214 of this title (relating to Long Run Incremental Cost (LRIC) Methodology for Services Provided by Certain Incumbent Local Exchange Companies (ILECS)) or §26.215 of this title (relating to Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility (DCTU) Services), as applicable. Any

application to establish or modify a long run incremental cost shall be filed by an electing company with the commission's Filing Clerk on or before the date a related informational notice is filed. Such an application shall be filed separately from the related informational notice. The minimum price of a nonbasic service shall be the lesser of:

- (i) the price for the service in effect on September 1, 1999, except that this clause shall not be considered for services that had either a rate of zero or no existing rate on September 1, 1999; or
- (ii) the long run incremental cost of the service in accordance with the imputation rules and requirements prescribed by or under PURA, Chapter 60, Subchapter D.

- (2) **Separately tariffed services.** Any nonbasic service offered by an electing company to customers as a component of a package or other pricing flexibility offering shall also be offered by the electing company as a separately tariffed service.

- (e) **New service.**

- (1) A new service, as the term is defined in §26.5 of this title (relating to Definitions), is a nonbasic service under subsection (c)(1)(K) of this section.
- (2) To introduce a new service tariff, an electing company shall follow the requirements in this section and the procedures in §26.227 of this title. If a

new service is offered by an electing company as a component of a package, the new service shall also be offered as a separately tariffed service and the separately tariffed service shall be subject to the pricing standards in subsection (d) of this section.

- (3) A package of services that includes one or more new services and one or more existing services shall not be considered a new service. To introduce such a package, an electing company shall follow the requirements in this section, the requirements in §26.226 of this title and the procedures in §26.227 of this title.

§26.226. Requirements Applicable to Pricing Flexibility for Chapter 58 Electing Companies.

- (a) **Application.** This section applies to any electing company as the term is defined in the Public Utility Regulatory Act (PURA) §58.002. Other sections applicable to an electing company, include, but are not limited to §26.211 of this title (relating to Rate-Setting for Services Subject to Significant Competitive Challenges), §26.224 of this title (relating to Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies), §26.225 of this title (relating to Requirements Applicable to Nonbasic Services for Chapter 58 Electing Companies) and §26.227 of this title (relating to Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58 Electing Companies). PURA §55.003 and §55.004 do not apply to the retail services offered by an electing company, or to the retail nonbasic services offered by a transitioning company, as defined by PURA §65.002.
- (b) **Purpose.** The purpose of this section is to establish requirements for Chapter 58 electing incumbent local exchange companies (ILECs) to exercise pricing flexibility.
- (c) **Pricing flexibility.** An electing ILEC shall exercise pricing flexibility in accordance with this section and §26.227 of this title.
- (1) Pricing flexibility includes:
- (A) customer specific contracts;
 - (B) packaging of services;

- (C) volume, term, and discount pricing;
 - (D) zone density pricing, with a zone to be defined as an exchange; and
 - (E) other promotional pricing.
- (2) A discount or other form of pricing flexibility for a basic or nonbasic service may not be preferential, prejudicial, discriminatory, predatory or anticompetitive.
 - (3) This section does not prohibit a volume discount or other discount based on a reasonable business purpose.
 - (4) Notwithstanding PURA §58.052(b) or PURA, Chapter 60, Subchapter F, an electing company may exercise pricing flexibility for basic network services, including the packaging of basic network services with any other regulated or unregulated service or any service of an affiliate.
 - (5) An electing company may flexibly price a package that includes a basic network service in any manner provided by paragraph (1) of this subsection.
 - (6) An electing company may use pricing flexibility for a basic or nonbasic service.
- (d) **Pricing standards.** An electing company exercising pricing flexibility shall price its offerings pursuant to this subsection.
- (1) The electing ILEC shall set the price of a package of services containing basic network services and nonbasic services at any level at or above the lesser of:

- (A) the sum of the long run incremental costs of any basic network services and nonbasic services contained in the package; or
 - (B) the sum of tariffed prices of any basic network services contained in the package and the long run incremental costs of nonbasic services contained in the package.
- (2) A price that is set at or above the long run incremental cost of a service is presumed not to be a predatory price.
- (3) The price of a package that combines regulated products or services with unregulated products or services shall, in addition to the requirements of paragraph (1) of this subsection, recover the cost to the electing company of acquiring and providing the unregulated products or services. In this section, unregulated products or services are products or services provided by an entity that is unaffiliated with the electing company.
- (4) The price of a package that combines regulated products or services with the products or services of an affiliate shall, in addition to the requirements of paragraph (1) of this subsection, recover the cost to the electing company of acquiring and providing the affiliate products or services, which shall be greater than or equal to the cost to the affiliate of acquiring and/or providing the products or services. The cost to the electing company of acquiring or providing the affiliate's products or services shall be valued in a manner consistent with FCC requirements and with paragraph (5) of this subsection. A group of products or services that are jointly marketed by an electing company in conjunction with one or more of its affiliates shall be priced in a

manner consistent with FCC requirements, if any, and with paragraph (5) of this subsection.

- (5) Consistent with PURA §52.051(1)(C), an electing company shall not use revenues from regulated monopoly services to subsidize services subject to competition.

(e) **Requirements for customer-specific contracts.** Consistent with PURA §58.003, an electing ILEC may enter into customer-specific contracts for certain basic network services and certain nonbasic services as provided in this subsection. An electing ILEC may but is not required to file customer-specific contracts with the commission.

- (1) An electing company serving fewer than five million access lines may offer customer-specific contracts in accordance with this subsection.

(A) An electing company serving fewer than five million access lines shall not offer customer-specific contracts until it notifies the commission of the company's binding commitment to make the following infrastructure improvements consistent with PURA §58.003(b):

- (i) install Common Channel Signaling 7 capability in each central office; and
- (ii) connect all of the company's serving central offices to their respective local access and transport area (LATA) tandem central offices with optical fiber or equivalent facilities.

- (B) The commitments described by subparagraph (A) of this paragraph do not apply to exchanges of the company sold or transferred before, or for which contracts for sale or transfer are pending on, September 1, 2001. In the case of exchanges for which contracts for sale or transfer are pending as of March 1, 2001, where the purchaser withdrew or defaulted before September 1, 2001, the company shall have one year from the date of withdrawal or default to comply with the commitments.
- (2) An electing company serving more than five million access lines may offer customer specific contracts in accordance with this subsection.
- (A) Unless the other party to the contract is a federal, state, or local governmental entity, an electing company serving more than five million access lines may not offer in an exchange a service, or an appropriate subset of a service, listed in PURA §58.051(a)(1) - (4) or §58.151(1) - (4) in a manner that results in a customer-specific contract until the earlier of:
- (i) September 1, 2003; or
 - (ii) the date on which the commission finds that at least 40% of the total access lines for that service or appropriate subset of that service in that exchange are served by competitive alternative providers that are not affiliated with the electing company.

- (B) Pursuant to subparagraph (A)(ii) of this paragraph, the commission may find that the following subsets of services are served by an alternative provider that is not affiliated with an ILEC serving more than five million access lines:
- (i) flat residential rate local exchange telephone service;
 - (ii) residential primary directory listings;
 - (iii) residential tone dialing service;
 - (iv) lifeline and tel-assistance service;
 - (v) service connection for basic residential services;
 - (vi) flat business rate local exchange telephone service;
 - (vii) business primary directory listings;
 - (viii) business tone dialing service;
 - (ix) service connection for all business services;
 - (x) direct inward dialing for basic business services; and
 - (xi) receipt of a directory.
- (3) This subsection does not preclude an electing company from offering a customer-specific contract to the extent allowed by PURA as of August 31, 1999.

§26.227. Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58 Electing Companies.

- (a) **Application.** This section applies to any electing company as the term is defined in the Public Utility Regulatory Act (PURA) §58.002 who chooses to offer nonbasic services and/or exercise pricing flexibility for basic and nonbasic services through informational notice filings. Other sections applicable to an electing company include, but are not limited to, §26.224 of this title (relating to Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies), §26.225 of this title (relating to Requirements Applicable to Nonbasic Services for Chapter 58-Electing Companies) and §26.226 of this title (relating to Requirements Applicable to Pricing Flexibility for Chapter 58 Electing Companies). Notwithstanding other provisions of this section, PURA §55.003 and §55.004 do not apply to the retail services offered by an electing company, or to the retail nonbasic services offered by a transitioning company, as defined by PURA §65.002.
- (b) **Purpose.** The purpose of this section is to establish procedures for an electing company that chooses to provide an informational notice to introduce nonbasic services, including new services, and/or to exercise pricing flexibility for basic and nonbasic services, and for complaints regarding service offerings introduced through informational notice filings.
- (c) **Informational notice filing and notice requirements related to pricing flexibility and nonbasic services, including new services.**

(1) **Notice requirements.**

- (A) General notice requirements. An electing company shall provide the informational notice in compliance with this section to the commission, to the Office of Public Utility Counsel (OPC), and to any person who holds a certificate of operating authority in the electing company's certificated area or areas, or who has an effective interconnection agreement with the electing company.
- (B) Unless an interconnection agreement contract specifies otherwise, an incumbent local exchange carrier shall continue to provide to affected resellers of retail services the same notice of rate changes or withdrawal of detariffed services that it was required to provide prior to detariffing.

(2) **Filing requirements:**

- (A) Filing of informational notice and confidential information. At the time the informational notice is filed in Central Records, a copy of the informational notice, including confidential information, shall be delivered to OPC. In addition to the record copy, an additional copy of any confidential information shall be filed in Central Records for use by the commission staff.
- (i) The commission shall assign each informational notice a unique control number and shall stamp the tariff sheets "received".

- (ii) The commission staff shall file any notice of deficiencies for incomplete filings not in compliance with this section or pleading alleging that the service offering is inappropriately filed as an informational notice filing within three working days after the date of the filing of the informational notice.
 - (iii) Within two working days after the date of the commission staff's filing, the applicant shall file an explanation of the actions it has taken or intends to take in response to a notice or pleading filed under clause (ii) of this subparagraph.
- (B) Effective date. A service offering shall be effective no earlier than ten days after the electing company files a complete informational notice with the commission.
- (C) Access to confidential information. Access to confidential information filed with the commission as part of an informational notice filing shall be available to commission staff and OPC, upon execution of a commission approved protective agreement, at the time the informational notice is filed.
- (D) Format of filing. An informational notice under this section must include the following elements:
 - (i) name of company;
 - (ii) PURA chapter under which company operates;
 - (iii) date of submission;
 - (iv) effective date;

- (v) new and/or revised tariff pages, written in plain language and conforming with §26.207 of this title (relating to Form and Filing of Tariffs); except that an informational notice filing that cross-references the rates, terms, and/or conditions of the utility's interstate switched-access tariff for an equivalent service may be considered sufficient. To implement concurrence of a utility's federal interstate switched-access tariff and its Texas intrastate switched-access tariff, the utility in the informational notice portion of its initial filing shall reference the uniform resource locator (URL or worldwide web address) on the Federal Communications Commission (FCC) website specific to the interstate switched-access tariff. Additionally, the utility shall reference the URL on the utility's commercial website specific to the intrastate switched-access tariff either in the informational notice portion of the filing or in the page(s) attached to the informational notice portion of the filing. Thereafter, the utility must notify the commission, in an informational notice filing, within 10 business days of any changes to the referenced concurring interstate rates. In any such filing, the utility shall provide in the informational notice portion of its filing the corresponding FCC Transmittal Number, reference the URL on the FCC website specific to the transmittal,

specify which rate elements changed, and reference the URL on the utility's commercial website specific to the intrastate switched-access tariff. The utility must also file an update to any URL(s) referenced in its intrastate tariff within 10 business days of any changes to such URL(s). If switched-access rates are no longer required to concur with federal rates, a new tariff must be filed;

- (vi) proposed implementation date (if different from effective date);
- (vii) affidavit of notice to OPC, COA holders, and parties to interconnection agreements;
- (viii) type of filing (new service; pricing flexibility involving basic service; non-basic only pricing flexibility; packaging, term and volume discount or promotional offering regulated by PURA §58.004; customer specific contract; customer specific contract regulated by PURA §58.003; promotional offering);
- (ix) relevant Long Run Incremental Cost (LRIC) study or LRIC study reference, and relevant support materials (confidential/proprietary/protected materials provided to commission only). When LRIC studies for which commission approval has not been obtained are provided with an informational notice filing, an application for approval of that LRIC study must be filed pursuant to the standards in §26.214

of this title (relating to Long Run Incremental Cost (LRIC) Methodology for Services Provided by Certain Incumbent Local Exchange Companies (ILECs)) or §26.215 of this title (relating to Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility (DCTU) Services), as applicable, to establish a LRIC floor and shall be filed before or simultaneously with the informational filing. The electing company shall file a notice of intent to file LRIC studies pursuant to §26.214 or §26.215 of this title no later than ten days prior to the filing of the LRIC study;

- (x) a response of “yes”, “no”, or “not applicable”, with explanatory language to the following question: “Is the sum of the Total Element Long Run Incremental Cost (TELRIC)-based wholesale prices of components needed for provision of the retail service at or below the retail price set forth in this filing?” If the response is “yes” or “no”, the filing must identify the components needed for the provision of the retail service, along with a list of relevant wholesale and retail prices;
- (xi) a response of “yes” or “no” to the following question: “Is the service available for resale by a competitor? If the answer is “no”, does the proposed price meet the standards set forth in

§26.274(f) - (h) of this title (relating to Imputation)?” For purposes of this question, “available for resale” means:

- (I) the service is not subject to tariffed resale restrictions;
and
 - (II) the electing company is not aware of any constraints that would prevent a competitor from functionally provisioning the service to the competitor’s customers in parity with the electing company’s provisioning of the service to the electing company’s customers;
- (xii) for package offerings that combine regulated products or services with unregulated products or services and/or with the products or services of an electing company’s affiliate, an affidavit indicating that the price of the package, in addition to the requirements of §26.226(d)(1) of this title, also recovers the cost to the electing company of acquiring and providing the unregulated products or services or the affiliate’s products or services. The affidavit shall also indicate that the cost to the electing company of acquiring and providing an affiliate’s products or services is greater than or equal to the cost to the affiliate of acquiring and/or providing the products or services. The cost to an electing company of acquiring or providing the affiliate’s products or services shall be valued in a manner consistent with FCC requirements and with §26.226(d)(5) of

this title. For a joint marketing effort that includes regulated products or services and the products or services of an affiliate, an affidavit shall be provided by each affected affiliate attesting that the affiliate's costs are recovered in a manner consistent with §26.226(d)(5) of this title and FCC requirements, if any;

- (xiii) description of the offering's terms and conditions, including location of service or a statement that it is to be provided state-wide; and
- (xiv) a privacy concerns statement.

(d) **Disputes as to sufficiency or appropriateness of informational notice filing.**

- (1) If the electing company advises the commission by written filing that a dispute exists with respect to a notice of deficiency or the inappropriateness of an informational notice, and requests the assignment of an administrative law judge to resolve the dispute, the commission will consider the dispute to be a contested case.
- (2) A contested case will also exist if the commission files a complaint addressing sufficiency or appropriateness of an informational notice filing.
- (3) Parties other than the commission staff may not challenge the sufficiency of an informational notice filing.

- (e) **Complaints regarding service offerings introduced by informational notice filings.** An affected person, OPC, or the commission may file a complaint at the commission on or after the date the informational notice has been filed. The filing of a complaint will initiate a contested case.
- (1) A complaint addressing an informational notice filing may challenge whether the filing is in compliance with PURA and/or commission substantive rules.
 - (2) If a complaint challenging the price of a new service is resolved in a final order issued by this commission in favor of the complainant, the electing company shall either:
 - (A) not later than the tenth day after the date the complaint is finally resolved, amend the price of the service as necessary to comply with the final resolution; or
 - (B) discontinue the service.
 - (3) The commission shall dismiss a complaint filed prior to the filing of an informational notice on the grounds that the commission lacks jurisdiction to hear the complaint.
 - (4) All complaints shall be docketed and governed by the commission's procedural rules and shall be filed and reviewed pursuant to the following requirements:
 - (A) Complaints shall be captioned: COMPLAINT BY {NAME OF COMPLAINANT} REGARDING TARIFF CONTROL NUMBER(S) {NUMBER(S)} {STYLE OF TARIFF CONTROL NUMBER}.

- (B) Processing. The commission shall assign each complaint filed with respect to an informational notice a unique control number. The presiding officer shall cause a copy of each complaint, bearing the assigned control number, to be filed in the relevant tariff control number(s) for the related informational notice filings.
- (5) The commission staff shall have standing in all proceedings related to informational notice filings before the commission, and may intervene by filing a notice of intervention, at any time prior to determination on the merits. No motion is necessary for such intervention.
- (6) A complaint filed pursuant to this section shall be considered to be an exception to the informal resolution requirements of §22.242(c) of this title (relating to Complaints).
- (f) **Interim relief.** A tariff for a new service introduced by an informational notice may not be suspended during the pendency of any complaint. All other tariffs introduced by informational notice filings will remain in effect during the pendency of any complaint unless interim relief suspending the tariff is granted pursuant to this subsection.
- (1) Any request that a tariff be suspended during the pendency of a complaint must meet the following requirements:
- (A) the pleading must state an appropriate and bona fide cause of action;
- (B) the pleading must be verified or supported with affidavits based on personal knowledge; and

- (C) the pleading must set forth the following elements: probable right of recovery, probable and irreparable injury in the interim, and no adequate alternative remedy.
- (2) The presiding officer shall schedule a hearing on interim relief in the form of suspension of a tariff on an expedited basis.
- (3) The burden of proof shall be upon the complainant with respect to each element of proof necessary to obtain any interim relief requested by the complainant.
- (g) A telecommunications provider that is not subject to rate-of-return regulation under PURA, Chapter 53:
- (1) may, but is not required to, maintain on file with the commission tariffs, price lists, or customer service agreements governing the terms of providing service;
- (2) may make changes in its tariffs, price lists, and customer service agreements in relation to services that are not subject to regulation without commission approval; and
- (3) may cross-reference its federal tariff in its state tariff if its intrastate switched access rates are the same as its interstate switched access rates.
- (h) A telecommunications provider may withdraw a tariff, price list, or customer service agreement not required to be filed or maintained with the commission under this section if the provider:

- (1) files written notice of the withdrawal with the commission; and
- (2) notifies its customers of the withdrawal and posts the current tariffs, price lists, or generic customer service agreements on its Internet website.

§26.228. Requirements Applicable to Chapter 52 Companies.

- (a) **Application.** This section applies to incumbent local exchange companies (ILECs), as defined in the Public Utility Regulatory Act (PURA) §51.002(3), which have not elected to be regulated pursuant to PURA Chapters 58 or 59.
- (b) **Purpose.** The purpose of this section is to establish the substantive and procedural requirements for an ILEC to introduce new services and/or to exercise pricing and packaging flexibility, including customer promotional offerings, and for complaints regarding service offerings introduced by informational notice offerings.
- (c) **New services.** The term “new services” has the meaning assigned in §26.5 of this title (relating to Definitions) and shall include services for which no rate was in effect on September 1, 1999. An ILEC may file an informational notice to introduce a new service. An ILEC filing an informational notice pursuant to this subsection shall file the appropriate information in accordance with subsection (g)(2) of this section.
- (1) **Pricing standards.**
- (A) An ILEC shall price each new service at or above the service’s long run incremental cost (LRIC).
- (B) The price of a new service may not be preferential, prejudicial, discriminatory, predatory, or anticompetitive.
- (C) A price that is set at or above the service’s LRIC is presumed not to be predatory.

- (2) **LRIC studies.** An ILEC may establish a service's LRIC by submitting a LRIC study, as specified in subsection (g)(2)(D)(ix) of this section, that conforms to the requirements of §26.214 of this title (relating to Long Run Incremental Cost (LRIC) Methodology for Services Provided by Certain Incumbent Local Exchange Companies (ILECs)).
 - (3) **LRIC adoption.** An ILEC serving fewer than one million access lines in Texas may establish a service's LRIC by adopting the commission-approved cost studies of a larger company for the same service.
 - (4) **Rate adoption.** In lieu of filing a LRIC study or adopting the LRIC studies of a larger company, an ILEC with less than one million access lines may adopt a rate that is identical to or higher than a larger company's tariffed rate for the same service.
 - (5) **Packaging of new services.** If an ILEC offers a new service as a component of a package, the ILEC shall also offer the new service as a separately tariffed service.
- (d) **Pricing and packaging flexibility.** An ILEC may file an informational notice to exercise pricing and packaging flexibility by filing the appropriate information in accordance with subsection (g)(2) of this section.
- (1) **General requirements.**
 - (A) Pricing flexibility includes:
 - (i) customer specific contracts;
 - (ii) packaging of services;

- (iii) volume, term, and discount pricing;
 - (iv) zone density pricing, with a zone defined as an exchange; and
 - (v) other promotional pricing.
 - (B) A discount or other form of pricing flexibility may not be preferential, prejudicial, discriminatory, predatory, or anticompetitive.
 - (C) An ILEC may exercise pricing flexibility, including the packaging or joint marketing of any regulated service with any other regulated or unregulated service or any service of an affiliate.
- (2) **Pricing standards.**
- (A) An ILEC shall price each regulated service offered separately or as part of a package at either the service's tariffed rate or at a rate not lower than the service's LRIC.
 - (B) An ILEC shall price each service at or above the service's LRIC.
 - (C) A price that is set at or above the service's LRIC is presumed not to be predatory.
 - (D) The price of a package that combines regulated products or services with unregulated products or services shall recover the cost to the ILEC of acquiring and providing the unregulated products or services. In this section, unregulated products or services are products or services provided by an entity that is unaffiliated with the ILEC.
 - (E) The price of a package that combines regulated products or services with the products or services of an affiliate shall recover the cost to the ILEC of acquiring and providing its affiliate's products or

services, which shall be greater than or equal to the cost to the affiliate of acquiring and/or providing the products or services. The cost to an ILEC of acquiring or providing the affiliate's products or services shall be valued in a manner consistent with Federal Communications Commission (FCC) requirements, to the extent such requirements are applicable to the ILEC, and with subparagraph (F) of this paragraph. A group of products or services that are jointly marketed by an ILEC in conjunction with one or more of its affiliates shall be priced in a manner consistent with FCC requirements, to the extent such requirements are applicable to the ILEC, and with subparagraph (F) of this paragraph.

- (F) Consistent with PURA §52.051(1)(C), an ILEC shall not use revenues from regulated monopoly services to subsidize services subject to competition.
- (3) **LRIC studies.** An ILEC may establish a service's LRIC by submitting a LRIC study, as specified in subsection (g)(2)(D)(ix) of this section, that conforms to the requirements of §26.214 of this title.
- (4) **LRIC adoption.** An ILEC serving fewer than one million access lines in Texas may establish a service's LRIC by adopting the commission-approved cost studies of a larger company for the same services.
- (5) **Rate adoption.** In lieu of filing a LRIC study or adopting the LRIC studies of a larger company, an ILEC with less than one million access lines may adopt a

rate that is identical to or higher than a larger company's tariffed rate for the same service.

- (e) **Customer promotional offerings.** An ILEC may file an informational notice to offer customer promotional offerings by filing the appropriate information in accordance with subsection (g)(2) of this section.
- (1) An ILEC may offer a promotion for a regulated service for not more than 90 days in any 12-month period.
 - (2) Customer promotional offerings may consist of:
 - (A) a waiver of installation charges or service order charges, or both, for not more than 90 days in a 12-month period; or
 - (B) a temporary discount of not more than 25% from the tariffed rate for not more than 60 days in a 12-month period.
 - (3) Although ILECs are not required to file LRIC studies with informational notices regarding these customer promotional offerings, the offerings are subject to the standards for pricing flexibility in subsection (d) of this section, in the event of a complaint.
- (f) **Requirements for customer specific contracts.** An ILEC may enter into customer-specific contracts for certain services as provided in §26.211 of this title (relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges). For all services not addressed in §26.211 of this title, an ILEC must offer customer-specific contracts pursuant to this section.

(g) **Procedures related to the filing of informational notices and associated tariffs.**

The provisions of this subsection apply to ILECs choosing to introduce new services and exercise pricing and packaging flexibility including customer promotional offerings through informational notice filings.

(1) **Notice requirements.**

(A) An ILEC shall provide the informational notice in compliance with this section to the commission, to the Office of Public Utility Counsel (OPC), and to any person who holds a certificate of operating authority in the ILEC's certificated area or areas, or who has an effective interconnection agreement with the ILEC.

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

(2) **Filing requirements.**

(A) Filing of informational notice and confidential information. At the time the informational notice is filed in Central Records, a copy of the informational notice, including confidential information, shall be delivered to OPC. In addition to the record copy, an additional copy of any confidential information shall be filed in Central Records for use by the commission staff.

- (i) The commission shall assign each informational notice a unique control number and shall stamp the tariff sheets “received.”
 - (ii) The commission staff shall file any notice of deficiencies (including deficiencies in LRIC studies submitted) for incomplete filings not in compliance with this section or pleading alleging that the service offering is inappropriately filed as an informational notice filing within three working days after the date of the filing of the informational notice.
 - (iii) Within two working days after the date of the commission staff’s filing, the applicant shall file an explanation of the actions it has taken or intends to take in response to a notice or pleading filed under clause (ii) of this subparagraph.
- (B) Effective date. A service offering shall be effective no earlier than ten days after the ILEC files a complete informational notice with the commission.
- (C) Access to confidential information. Access to confidential information filed with the commission as part of an informational notice filing shall be available to commission staff and OPC, upon execution of a commission approved protective agreement, at the time the informational notice is filed.
- (D) Format of filing. An informational notice under this section must include the following elements:

- (i) name of company;
- (ii) PURA chapter under which company operates;
- (iii) date of submission;
- (iv) effective date;
- (v) new and/or revised tariff pages, written in plain language and conforming to the requirements of §26.207 of this title (relating to Form and Filing of Tariffs);
- (vi) proposed implementation date (if different from effective date);
- (vii) affidavit of notice to the Office of Public Utility Counsel, certificate of operating authority holders, and parties to interconnection agreements;
- (viii) type of filing (new service; pricing flexibility; packaging, or promotional offering; customer specific contract);
- (ix) except for customer promotional offerings, relevant LRIC study or LRIC study reference, and relevant support materials (confidential/proprietary/protected materials provided to commission only). When LRIC studies for which commission approval has not been obtained are provided with an informational notice filing, an application for approval of that LRIC study must be filed pursuant to the standards in §26.214 of this title to establish a LRIC floor and shall be filed before or simultaneously with the informational notice filing. The

ILEC shall file a notice of intent to file LRIC studies pursuant to §26.214 of this title no later than ten days before the filing of the LRIC study;

- (x) except for customer promotional offerings, relevant LRIC study or LRIC study reference, and relevant supporting materials (confidential/proprietary/protected materials provided to commission only), if an ILEC chooses to adopt LRIC studies of a larger company pursuant to the requirements of subsection (c)(3) or (d)(4) of this section, as applicable;
- (xi) except for customer promotional offerings, relevant tariff rates or specific tariff references, if the ILEC chooses to adopt rates of a larger company pursuant to requirements of subsection (c)(4) or (d)(5) of this section, as applicable;
- (xii) a response of “yes”, “no”, or “not applicable”, with explanatory language, to the following question: “Is the sum of the TELRIC-based wholesale prices of components needed for provision of the retail service at or below the retail price set forth in this filing?” Except for customer promotional offerings, if the response is “yes” or “no”, the filing must identify the components needed for the provision of the retail service, along with a list of relevant wholesale and retail prices;

- (xiii) a response of “yes” or “no” to the following question: “Is the service available for resale by a competitor?” If the answer is “no”, does the proposed price meet the standards set forth in §26.274 (f) - (h) of this title (relating to Imputation)? For purposes of this question, “available for resale” means:
- (I) the service is not subject to tariffed resale restrictions;
and
 - (II) the ILEC is not aware of any constraints that would prevent a competitor from functionally provisioning the service to the competitor’s customers in parity with the ILEC’s provisioning of the service to the ILEC’s customers;
- (xiv) for package offerings that combine regulated products or services with unregulated products or services and/or with the products or services of an ILEC’s affiliate, an affidavit indicating that the price of the package recovers the cost to the ILEC of acquiring and providing the unregulated products or services or the affiliate’s products or services. The affidavit shall also indicate that the cost to the ILEC of acquiring and providing an affiliate’s products or services is greater than or equal to the cost to the affiliate of acquiring and/or providing the products or services. The cost to an ILEC of acquiring or providing the affiliate’s products or services shall be valued in

a manner consistent with FCC requirements, to the extent FCC requirements are applicable to the ILEC, and with subsection (d)(2)(F) of this section. For a joint marketing effort that includes regulated products or services and the products or services of an affiliate, an affidavit shall be provided by each affected affiliate attesting that the affiliate's costs are recovered in a manner consistent with subsection (d)(2)(F) of this section and FCC requirements, to the extent FCC requirements are applicable to the ILEC;

- (xv) description of the offering's terms and conditions, including location of service or a statement that it is to be provided state-wide; and
 - (xvi) a privacy concerns statement.
- (E) For customer promotional offerings:
- (i) Affidavit that a promotion for this service has not exceeded 90 days for the previous 12-month period.
 - (ii) Promotional tariff or letter identifying the promotional service and whether it is for a waiver of installation or service order charges, or both (90 days) or a discount of 25% or less (60 days).

(3) **Disputes as to sufficiency or appropriateness of informational notice filing.**

(A) If the ILEC advises the commission by written filing that a dispute exists with respect to a notice of deficiency or the inappropriateness of an informational notice, and requests the assignment of an administrative law judge to resolve the dispute, the commission will consider the dispute to be a contested case.

(B) A contested case will also exist if the commission files a complaint addressing sufficiency or appropriateness of an informational notice filing.

(C) Parties other than the commission staff may not challenge the sufficiency of an informational notice filing.

(4) **Complaints regarding service offerings introduced by informational notice filings.**

(A) Subject to subparagraph (E) of this paragraph, an affected person, the OPC, or the commission may file a complaint at the commission on or after the date the informational notice has been filed. The filing of a complaint will initiate a contested case.

(B) A complaint addressing an informational notice involving pricing flexibility, including customer promotions, may challenge whether the filing is in compliance with PURA and the commission substantive rules.

- (C) A complaint addressing an informational notice involving a new service may challenge whether the tariff is in compliance with the pricing standards of PURA and commission substantive rules. If the complaint is finally resolved in a final order issued by the commission in favor of the complainant, the ILEC shall either:
- (i) not later than the tenth day after the date the complaint is finally resolved, amend the price of the service as necessary to comply with the final resolution; or
 - (ii) discontinue the service.
- (D) The commission shall dismiss a complaint filed prior to the filing of an informational notice on the grounds that the commission lacks jurisdiction to hear the complaint.
- (E) The commission shall consider any complaint alleging that the pricing of a regulated service does not meet the pricing standards of PURA and commission substantive rules, which is filed 31 or more days after the implementation date of the tariff, to be untimely.
- (F) All complaints shall be docketed and governed by the commission's procedural rules and shall be filed and reviewed pursuant to the following requirements:
- (i) Complaints shall be captioned: COMPLAINT BY {NAME OF COMPLAINANT} REGARDING TARIFF CONTROL

NUMBER(S) {NUMBER(S)} {STYLE OF TARIFF CONTROL NUMBER}.

- (ii) Processing. The commission shall assign each complaint filed with respect to an informational notice a unique control number. The presiding officer shall cause a copy of each complaint, bearing the assigned control number, to be filed in the relevant tariff control number(s) for the related informational notice(s).
- (G) The commission staff shall have standing in all proceedings related to informational notice filings before the commission and may intervene by filing a notice of intervention at any time prior to determination on the merits. No motion is necessary for such intervention.
- (H) A complaint filed pursuant to this section shall be considered to be an exception to the informal resolution requirements of procedural rule §22.242(c) of this title (relating to Complaints).
- (5) **Interim relief.** All tariffs introduced by informational notice filings will remain in effect during the pendency of any complaint unless interim relief suspending the tariff is granted pursuant to this subsection.
 - (A) Any request that a tariff be suspended during the pendency of a complaint must meet the following requirements:
 - (i) the pleading must state an appropriate and bona fide cause of action;

- (ii) the pleading must be verified or supported with affidavits based on personal knowledge; and
 - (iii) the pleading must set forth the following elements: probable right of recovery, probable and irreparable injury in the interim, and no adequate alternative remedy.
- (B) The presiding officer shall schedule a hearing on interim relief in the form of suspension of a tariff on an expedited basis.
- (C) The burden of proof shall be upon the complainant with respect to each element of proof necessary to obtain any interim relief requested by the complainant.

§26.229. Requirements Applicable to Chapter 59 Electing Companies.

- (a) **Application.** This section applies to electing companies, as defined in the Public Utility Regulatory Act (PURA) §59.002(1).
- (b) **Purpose.** The purpose of this section is to establish the substantive and procedural requirements for an electing company that chooses to provide an informational notice to introduce new services and/or to exercise pricing and packaging flexibility, including customer promotional offerings, and for complaints regarding service offerings introduced by informational notice offerings.
- (c) **New services.** The term “new services” has the meaning assigned in §26.5 of this title (relating to Definitions) and shall include services for which no rate was in effect on September 1, 1999. An electing company may file an informational notice to introduce a new service. An electing company filing an informational notice pursuant to this subsection shall file the appropriate information in accordance with subsection (g)(2) of this section.
- (1) **Pricing standards.**
- (A) An electing company shall price each new service at or above the service’s long run incremental cost (LRIC).
- (B) The price of a new service may not be preferential, prejudicial, discriminatory, predatory, or anticompetitive.
- (C) A price that is set at or above the service’s LRIC is presumed not to be predatory.

- (2) **LRIC studies.** An electing company may establish a service's LRIC by submitting a LRIC study, as specified in subsection (g)(2)(D)(ix) of this section, that conforms to the requirements of §26.214 of this title (relating to Long Run Incremental Cost (LRIC) Methodology for Services Provided by Certain Incumbent Local Exchange Companies (ILECs)).
 - (3) **LRIC adoption.** An electing company serving fewer than one million access lines in Texas may establish a service's LRIC by adopting the commission-approved cost studies of a larger company for the same service.
 - (4) **Rate adoption.** In lieu of filing a LRIC study or adopting the LRIC studies of a larger company, an electing company with less than one million access lines may adopt a rate that is identical to or higher than a larger company's tariffed rate for the same service.
 - (5) **Packaging of new services.** If an electing company offers a new service as a component of a package, the electing company shall also offer the new service as a separately tariffed service.
- (d) **Pricing and packaging flexibility.** An electing company may file an informational notice to exercise pricing and packaging flexibility by filing the appropriate information in accordance with subsection (g)(2) of this section.
- (1) **General requirements.**
 - (A) Pricing flexibility includes:
 - (i) customer specific contracts;
 - (ii) packaging of services;

- (iii) volume, term, and discount pricing;
 - (iv) zone density pricing, with a zone defined as an exchange; and
 - (v) other promotional pricing.
 - (B) A discount or other form of pricing flexibility may not be preferential, prejudicial, discriminatory, predatory, or anticompetitive.
 - (C) An electing company may exercise pricing flexibility, including the packaging or joint marketing of any regulated service with any other regulated or unregulated service or any service of an affiliate.
- (2) **Pricing standards.**
- (A) An electing company shall price each regulated service offered separately or as part of a package at either the service's tariffed rate or at a rate not lower than the service's LRIC.
 - (B) An electing company shall price each service at or above the service's LRIC.
 - (C) A price that is set at or above the service's LRIC is presumed not to be predatory.
 - (D) The price of a package that combines regulated products or services with unregulated products or services shall recover the cost to the electing company of acquiring and providing the unregulated products or services. In this section, unregulated products or services are products or services provided by an entity that is unaffiliated with the electing company.

- (E) The price of a package that combines regulated products or services with the products or services of an affiliate shall recover the cost to the electing company of acquiring and providing its affiliate's products or services, which shall be greater than or equal to the cost to the affiliate of acquiring and/or providing the products or services. The cost to an electing company of acquiring or providing the affiliate's products or services shall be valued in a manner consistent with Federal Communications Commission (FCC) requirements, to the extent such requirements are applicable to the electing company, and with subparagraph (F) of this paragraph. A group of products or services that are jointly marketed by an electing company in conjunction with one or more of its affiliates shall be priced in a manner consistent with FCC requirements, to the extent such requirements are applicable to the electing company, and with subparagraph (F) of this paragraph.
- (F) Consistent with PURA §52.051(1)(C), an electing company shall not use revenues from regulated monopoly services to subsidize services subject to competition.
- (3) **LRIC studies.** An electing company may establish a service's LRIC by submitting a LRIC study, as specified in subsection (g)(2)(D)(ix) of this section, that conforms to the requirements of §26.214 of this title.

- (4) **LRIC adoption.** An electing company serving fewer than one million access lines in Texas may establish a service's LRIC by adopting the commission-approved cost studies of a larger company for the same services.
 - (5) **Rate adoption.** In lieu of filing a LRIC study or adopting the LRIC studies of a larger company, an electing company with less than one million access lines may adopt a rate that is identical to or higher than a larger company's tariffed rate for the same service.
- (e) **Customer promotional offerings.** An electing company may file an informational notice to offer customer promotional offerings by filing the appropriate information in accordance with subsection (g)(2) of this section.
 - (1) An electing company may offer a promotion for a regulated service for not more than 90 days in any 12-month period.
 - (2) Customer promotional offerings may consist of:
 - (A) a waiver of installation charges or service order charges, or both, for not more than 90 days in a 12-month period; or
 - (B) a temporary discount of not more than 25% from the tariffed rate for not more than 60 days in a 12-month period.
 - (3) Although electing companies are not required to file LRIC studies with informational notices regarding these customer promotional offerings, the offerings are subject to the standards for pricing flexibility in subsection (d) of this section, in the event of a complaint.

(f) **Requirements for customer specific contracts.** An electing company may enter into customer-specific contracts for certain services as provided in §26.211 of this title (relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges). For all services not addressed in §26.211 of this title, an electing company must offer customer specific contracts pursuant to this section.

(g) **Procedures related to the filing of informational notices and associated tariffs.** The provisions of this subsection apply to electing companies choosing to introduce new services and exercise pricing and packaging flexibility including customer promotional offerings through informational notice filings.

(1) **Notice requirements.**

(A) An electing company shall provide the informational notice in compliance with this section to the commission, to the Office of Public Utility Counsel (OPC), and to any person who holds a certificate of operating authority in the electing company's certificated area or areas, or who has an effective interconnection agreement with the electing company.

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

(2) **Filing requirements.**

- (A) Filing of informational notice and confidential information. At the time the informational notice is filed in Central Records, a copy of the informational notice, including confidential information, shall be delivered to OPC. In addition to the record copy, an additional copy of any confidential information shall be filed in Central Records for use by the commission staff.
- (i) The commission shall assign each informational notice a unique control number and shall stamp the tariff sheets “received”.
- (ii) The commission staff shall file any notice of deficiencies (including deficiencies in LRIC studies submitted) for incomplete filings not in compliance with this section or pleading alleging that the service offering is inappropriately filed as an informational notice filing within three working days after the date of the filing of the informational notice.
- (iii) Within two working days after the date of the commission staff’s filing, the applicant shall file an explanation of the actions it has taken or intends to take in response to a notice or pleading filed under clause (ii) of this subparagraph.
- (B) Effective date. A service offering shall be effective no earlier than ten days after the electing company files a complete informational notice with the commission.

- (C) Access to confidential information. Access to confidential information filed with the commission as part of an informational notice filing shall be available to commission staff and OPC, upon execution of a commission approved protective agreement, at the time the informational notice is filed.
- (D) Format of filing. An informational notice under this section must include the following elements:
- (i) name of company;
 - (ii) PURA chapter under which company operates;
 - (iii) date of submission;
 - (iv) effective date;
 - (v) new and/or revised tariff pages, written in plain language and conforming to the requirements of §26.207 of this title (relating to Form and Filing of Tariffs);
 - (vi) proposed implementation date (if different from effective date);
 - (vii) affidavit of notice to the Office of Public Utility Counsel, certificate of operating authority holders, and parties to interconnection agreements;
 - (viii) type of filing (new service; pricing flexibility; packaging, or promotional offering; customer specific contract);
 - (ix) except for customer promotional offerings, relevant LRIC study or LRIC study reference, and relevant support materials

(confidential/proprietary/protected materials provided to commission only). When LRIC studies for which commission approval has not been obtained are provided with an informational notice filing, an application for approval of that LRIC study must be filed pursuant to the standards in §26.214 of this title to establish a LRIC floor and shall be filed before or simultaneously with the informational notice filing. The electing company shall file a notice of intent to file LRIC studies pursuant to §26.214 of this title no later than ten days before the filing of the LRIC study;

- (x) except for customer promotional offerings, relevant LRIC study or LRIC study reference, and relevant supporting materials (confidential/proprietary/protected materials provided to commission only), if an electing company chooses to adopt LRIC studies of a larger company pursuant to the requirements of subsection (c)(3) or (d)(4) of this section, as applicable;
- (xi) except for customer promotional offerings, relevant tariff rates or specific tariff references, if the electing company chooses to adopt rates of a larger company pursuant to requirements of subsection (c)(4) or (d)(5) of this section, as applicable;
- (xii) a response of “yes”, “no”, or “not applicable”, with explanatory language, to the following question: “Is the sum

of the TELRIC-based wholesale prices of components needed for provision of the retail service at or below the retail price set forth in this filing?” Except for customer promotional offerings, if the response is “yes” or “no”, the filing must identify the components needed for the provision of the retail service, along with a list of relevant wholesale and retail prices;

(xiii) a response of “yes” or “no” to the following question: “Is the service available for resale by a competitor?” If the answer is “no”, does the proposed price meet the standards set forth in §26.274 (f) - (h) of this title (relating to Imputation)? For purposes of this question, “available for resale” means:

(I) the service is not subject to tariffed resale restrictions;
and

(II) the electing company is not aware of any constraints that would prevent a competitor from functionally provisioning the service to the competitor’s customers in parity with the electing company’s provisioning of the service to the electing company’s customers; providing the products or services. The cost to an electing company of acquiring or providing the affiliate’s products or services shall be valued in a manner consistent with FCC requirements, to the

extent FCC requirements are applicable to the electing company, and with subsection (d)(2)(F) of this section.

For a joint marketing effort that includes regulated products or services and the products or services of an affiliate, an affidavit shall be provided by each affected affiliate attesting that the affiliate's costs are recovered in a manner consistent with subsection (d)(2)(F) of this section and FCC requirements, to the extent FCC requirements are applicable to the electing company;

- (xiv) for package offerings that combine regulated products or services with unregulated products or services and/or with the products or services of an electing company's affiliate, an affidavit indicating that the price of the package recovers the cost to the electing company of acquiring and providing the unregulated products or services or the affiliate's products or services. The affidavit shall also indicate that the cost to the electing company of acquiring and providing an affiliate's products or services is greater than or equal to the cost to the affiliate of acquiring and/or providing the products or services. The cost to an electing company of acquiring or providing the affiliate's products or services shall be valued in a manner consistent with FCC requirements, to the extent FCC requirements are applicable to the electing company, and with

subsection (d)(2)(F) of this section. For a joint marketing effort that includes regulated products or services and the products or services of an affiliate, an affidavit shall be provided by each affected affiliate attesting that the affiliate's costs are recovered in a manner consistent with subsection (d)(2)(F) of this section and FCC requirements, to the extent FCC requirements are applicable to the electing company;

(xv) description of the offering's terms and conditions, including location of service or a statement that it is to be provided state-wide; and

(xvi) a privacy concerns statement.

(E) For customer promotional offerings:

(i) Affidavit that a promotion for this service has not exceeded 90 days for the previous 12-month period.

(ii) Promotional tariff or letter identifying the promotional service and whether it is for a waiver of installation or service order charges, or both (90 days) or a discount of 25% or less (60 days).

(3) **Disputes as to sufficiency or appropriateness of informational notice filing.**

(A) If the electing company advises the commission by written filing that a dispute exists with respect to a notice of deficiency or the inappropriateness of an informational notice, and requests the

assignment of an administrative law judge to resolve the dispute, the commission will consider the dispute to be a contested case.

- (B) A contested case will also exist if the commission files a complaint addressing sufficiency or appropriateness of an informational notice filing.
 - (C) Parties other than the commission staff may not challenge the sufficiency of an informational notice filing.
- (4) **Complaints regarding service offerings introduced by informational notice filings.**
- (A) Subject to subparagraph (E) of this paragraph, an affected person, the OPC, or the commission may file a complaint at the commission on or after the date the informational notice has been filed. The filing of a complaint will initiate a contested case.
 - (B) A complaint addressing an informational notice involving pricing flexibility, including customer promotions, may challenge whether the filing is in compliance with PURA and the commission substantive rules.
 - (C) A complaint addressing an informational notice involving a new service may challenge whether the tariff is in compliance with the pricing standards of PURA and commission substantive rules. If the complaint is finally resolved in a final order issued by the commission in favor of the complainant, the electing company shall either:

- (i) not later than the tenth day after the date the complaint is finally resolved, amend the price of the service as necessary to comply with the final resolution; or
 - (ii) discontinue the service.
- (D) The commission shall dismiss a complaint filed prior to the filing of an informational notice on the grounds that the commission lacks jurisdiction to hear the complaint.
- (E) The commission shall consider any complaint alleging that the pricing of a regulated service does not meet the pricing standards of PURA and commission substantive rules, which is filed 31 or more days after the implementation date of the tariff, to be untimely.
- (F) All complaints shall be docketed and governed by the commission's procedural rules and shall be filed and reviewed pursuant to the following requirements:
 - (i) Complaints shall be captioned: COMPLAINT BY {NAME OF COMPLAINANT} REGARDING TARIFF CONTROL NUMBER(S) {NUMBER(S)} {STYLE OF TARIFF CONTROL NUMBER}.
 - (ii) Processing. The commission shall assign each complaint filed with respect to an informational notice a unique control number. The presiding officer shall cause a copy of each complaint, bearing the assigned control number, to be filed in

the relevant tariff control number(s) for the related informational notice(s).

- (G) The commission staff shall have standing in all proceedings related to informational notice filings before the commission, and may intervene by filing a notice of intervention at any time prior to determination on the merits. No motion is necessary for such intervention.
- (H) A complaint filed pursuant to this section shall be considered to be an exception to the informal resolution requirements of procedural rule §22.242(c) of this title (relating to Complaints).
- (5) **Interim relief.** All tariffs introduced by informational notice filings will remain in effect during the pendency of any complaint unless interim relief suspending the tariff is granted pursuant to this subsection.
 - (A) Any request that a tariff be suspended during the pendency of a complaint must meet the following requirements:
 - (i) the pleading must state an appropriate and bona fide cause of action;
 - (ii) the pleading must be verified or supported with affidavits based on personal knowledge; and
 - (iii) the pleading must set forth the following elements: probable right of recovery, probable and irreparable injury in the interim, and no adequate alternative remedy.
 - (B) The presiding officer shall schedule a hearing on interim relief in the form of suspension of a tariff on an expedited basis.

- (C) The burden of proof shall be upon the complainant with respect to each element of proof necessary to obtain any interim relief requested by the complainant.
- (h) A telecommunications provider that is not subject to rate-of-return regulation under PURA, Chapter 53:
- (1) may, but is not required to, maintain on file with the commission tariffs, price lists, or customer service agreements in relation to services that are not subject to regulation without commission approval;
 - (2) may make changes in its tariffs, price lists, and customer service agreements in relation to services that are not subject to regulation without commission approval; and
 - (3) may cross-reference its federal tariff in its state tariff if its intrastate switched access rates are the same as its interstate switched access rates.
- (i) A telecommunications provider may withdraw a tariff, price list, or customer service agreement not required to be filed or maintained with the commission under this section if the provider:
- (1) files written notice of the withdrawal with the commission; and
 - (2) notifies its customers of the withdrawal and posts the current tariffs, price lists, or generic customer service agreements on its Internet website.

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

- (a) **Application.** This section applies to incumbent local exchange companies (ILECs), as defined in the Public Utility Regulatory Act (PURA) §51.002(3), with markets deregulated pursuant to PURA Chapter 65 who choose to offer services through one-day informational notice filings pursuant to PURA §§65.151-65.153. Except as provided in subsection (i) of this section, a transitioning company, as defined in PURA §65.002(5), which does not choose to offer services through a one-day informational notice filing must either offer services through ten-day informational notice filings pursuant to §§26.227-26.229 of this title (relating to Costs, Rates and Tariffs) or through filings pursuant to §§26.207-26.211 of this title (relating to Costs, Rates and Tariffs).
- (b) **Purpose.** The purpose of this section is to establish the requirements for a transitioning ILEC that chooses to provide an informational notice to introduce new services, and/or to exercise pricing flexibility for basic and non-basic retail telecommunications services, and to outline the procedures for processing complaints regarding service offerings introduced by such informational notice filings.
- (c) **Pricing standards.**
- (1) In a market that remains regulated, the transitioning ILEC shall price its retail services in accordance with the provisions as set forth in §§26.224-26.226 of this title (relating to Costs, Rates and Tariffs).

- (2) In a deregulated market, the transitioning ILEC shall price its retail services as follows:
- (A) for all services, other than residential service, at a price equal to or higher than the service's long run incremental costs (LRIC); and
 - (B) for basic local telecommunications service, at any price higher than the lesser of the service's LRIC or the tariffed price on the date the market was deregulated.
- (3) Notwithstanding any other long-run incremental cost filing requirements in this subchapter, a transitioning company, upon written notice to the commission, is not required to comply with a direct or indirect requirement to price a residential service at, above, or according to the long-run incremental cost of the service or to otherwise use long-run incremental cost in establishing prices for residential services or to file with the commission a long-run incremental cost study for any service. .
- (4) Notwithstanding paragraphs (2) and (3) of this subsection, a transitioning company may not:
- (A) establish a retail rate, term, or condition that is anticompetitive or unreasonably preferential, prejudicial, or discriminatory;
 - (B) establish a retail rate for a basic or non-basic service in a deregulated market that is subsidized either directly or indirectly by a basic or non-basic service provided in an exchange that is not deregulated; or
 - (C) engage in predatory pricing or attempt to engage in predatory pricing.
- A rate or price for a basic local telecommunications service is not

anticompetitive, predatory, or unreasonably preferential, prejudicial, or discriminatory if the rate or price is equal to or greater than the rate or price in the transitioning company's tariff, or price list, for that service in effect on the date the transitioning company submits notice to the commission under paragraph (3) of this subsection.

- (5) In each deregulated market, a transitioning company shall make available to all residential customers throughout that market the same price, terms, and conditions for all basic and non-basic retail telecommunications services, consistent with any pricing flexibility available to the company on or before August 31, 2005.
 - (6) A rate that meets the pricing requirements of paragraph (2) of this subsection is deemed compliant with paragraph (4)(B) of this subsection.
 - (7) A transitioning company may offer to an individual residential customer a promotional offer that is not available uniformly throughout the market if the company makes the offer through a medium other than direct mail or mass electronic media and the offer is intended to retain or obtain a customer.
- (d) **Procedures related to the filing of one-day informational notices and associated tariffs.** The provisions of this subsection apply to ILECs choosing to introduce new services and/or exercise pricing and packaging flexibility through one-day informational notice filings.

(1) **Notice requirements.**

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

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

(2) **Filing requirements.**

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

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

Flexibility for Basic and Nonbasic Services for Chapter 58 Electing Companies) and the following:

- (i) For retail services offered in regulated markets, the transitioning company must demonstrate that the rates, terms, and conditions comply with the requirements of subsection (c)(1) of this section and affirm that the said rates, terms and conditions comply with requirements in subsection (c)(4) of this section.
 - (ii) For retail services offered in deregulated markets, the transitioning company must demonstrate that the rates, terms, and conditions comply with requirements in subsection (c)(2), and (4)-(7) of this section.
- (C) **Access to confidential information.** Access to confidential information filed with the commission as part of an informational notice filing shall be available to commission staff and OPC, upon execution of a commission approved protective agreement.
- (D) **Effective date.** A transitioning ILEC's service offering shall be effective one day after the transitioning ILEC files an informational notice with the commission.
- (e) **Notice of deficiencies and disputes as to sufficiency or appropriateness of one-day informational notice filings.**

- (1) The commission staff may file a notice of deficiency for incomplete filings or non-compliant filings or a pleading alleging that the service offering is inappropriately filed as a one-day informational notice.
 - (2) Within five working days after the date of the commission staff's filing, an applicant shall file an explanation of the actions it has taken or intends to take in response to the notice or pleading filed under paragraph (1) of this subsection.
 - (3) Disputes as to sufficiency or appropriateness of one-day informational notice filings shall be subject to the provisions of §26.227(d) of this title.
- (f) **Complaints.**
- (1) An affected person may file a complaint at the commission challenging whether a transitioning company is complying with subsection (c) of this section.
 - (2) Notwithstanding subsection (c)(3) of this section, the commission may require a transitioning company to submit a long-run incremental cost study for a business service that is the subject of a complaint submitted under paragraph (1) of this subsection.
- (g) A telecommunications provider that is not subject to rate-of-return regulation under PURA, Chapter 53:

- (1) may, but is not required to, maintain on file with the commission tariffs, price lists, or customer service agreements governing the terms of providing service ;
 - (2) may make changes in its tariffs, price lists, and customer service agreements in relation to services that are not subject to regulation without commission approval; and
 - (3) may cross-reference its federal tariff in its state tariff if the provider's intrastate switched access rates are the same as the provider's interstate switched access rates.
- (h) A telecommunications provider may withdraw a tariff, price list, or customer service agreement not required to be filed or maintained with the commission under this section if the provider:
- (1) files written notice of the withdrawal with the commission; and
 - (2) notifies its customers of the withdrawal and posts the current tariffs, price lists, or generic customer service agreements on its Internet website.
- (i) A deregulated company or a transitioning company is not required to obtain advance approval for a filing with the commission or a posting on the company's Internet website that adds, modifies, withdraws, or grandfathers:
- (1) a nonbasic retail service or the service's rates, terms or conditions; or
 - (2) for a market that has been deregulated, a basic network service or the service's rates, terms or conditions.

§26.272. Interconnection.

- (a) **Purpose.** The purpose of this section is to ensure that all providers of telecommunications services which are certificated to provide local exchange service, basic local telecommunications service, or switched access service within the state interconnect and maintain interoperable networks such that the benefits of local exchange competition are realized as envisioned under the provisions of the Public Utility Regulatory Act (PURA). The commission finds that interconnection is necessary to achieve competition in the local exchange market and is, therefore, in the public interest.
- (b) **Definition.** The term “customer” when used in this section, shall mean an end-user customer.
- (c) **Application and Exceptions.**
- (1) **Application.** This section applies to all certificated telecommunications utilities (CTUs) providing local exchange service.
- (2) **Exceptions.** Except as herein provided, all CTUs providing local exchange service must comply with the requirements of this section.
- (A) Holders of a service provider certificate of operating authority (SPCOA).
- (i) The holder of an SPCOA that does not provide dial tone and only resells the telephone services of another CTU shall be subject only to the requirements of subsection (e)(1)(B)(ii) and

(D)(i)-(vii) of this section and subsection (i)(1)-(3) of this section.

- (ii) The underlying CTU providing service to the holder of an SPCOA referenced in clause (i) of this subparagraph shall comply with the requirements of this section with respect to the customers of the SPCOA holder.

(B) Small incumbent local exchange companies (ILECs).

- (i) This section shall apply to small ILECs to the extent required by 47 United States Code §251(f) (1996).
- (ii) Notwithstanding the requirement in clause (i) of this subparagraph, small ILECs shall terminate traffic of a CTU which originates and terminates within the small ILEC's extended local calling service (ELCS) or extended area service (EAS) calling scope, where the small ILEC has an ELCS or EAS arrangement with another DCTU. The termination of this traffic shall be at rates, terms, and conditions as described in subsection (d)(4)(A) of this section.

(C) Rural telephone companies.

- (i) This section shall also apply to rural telephone companies as defined in 47 United States Code §153 (1996) to the extent required by 47 United States Code §251(f) (1996).
- (ii) Rural telephone companies shall terminate traffic of a CTU which originates and terminates within the rural telephone

company's ELCS or EAS calling scope, where the rural telephone company has an ELCS or EAS arrangement with another DCTU. The termination of this traffic shall be at rates, terms, and conditions as described in subsection (d)(4)(A) of this section.

(D) Small CTUs.

(i) A small CTU may petition for a suspension or modification of the application of this section pursuant to 47 United States Code §251(f)(2) (1996).

(ii) Small CTUs shall terminate traffic of a CTU which originates and terminates within the small CTU's ELCS or EAS calling scope, where the small CTU has an ELCS or EAS arrangement with another DCTU. The termination of this traffic shall be at rates, terms, and conditions as described in subsection (d)(4)(A) of this section.

(E) Deregulated companies and nondominant telecommunications utilities.

Subsection (i)(2) and (3) of this section does not apply to deregulated companies holding a certificate of operating authority or to exempt carriers under PURA §52.154.

(d) **Principles of interconnection.**

(1) **General principles.**

- (A) Interconnection between CTUs shall be established in a manner that is seamless, interoperable, technically and economically efficient, and transparent to the customer.
- (B) Interconnection between CTUs shall utilize nationally accepted telecommunications industry standards and/or mutually acceptable standards for construction, operation, testing and maintenance of networks, such that the integrity of the networks is not impaired.
- (C) A CTU may not unreasonably:
 - (i) discriminate against another CTU by refusing access to the local exchange;
 - (ii) refuse or delay interconnections to another CTU;
 - (iii) degrade the quality of access provided to another CTU;
 - (iv) impair the speed, quality, or efficiency of lines used by another CTU;
 - (v) fail to fully disclose in a timely manner, on request, all available information necessary for the design of equipment that will meet the specifications of the local exchange network; or
 - (vi) refuse or delay access by any person to another CTU.
- (D) Interconnecting CTUs shall negotiate rates, terms, and conditions for facilities, services, or any other interconnection arrangements required pursuant to this section.

- (E) This section should not be construed to allow an interconnecting CTU access to another CTU's network proprietary information or customer proprietary network information, customer-specific as defined in §26.5 of this title (relating to Definitions) unless otherwise permitted in this section.
- (2) Technical interconnection principles. Interconnecting CTUs shall make a good-faith effort to accommodate each other's technical requests, provided that the technical requests are consistent with national industry standards and are in compliance with §26.52 of this title (relating to Emergency Operations), §26.53 of this title (relating to Inspections and Tests), §26.54 of this title (relating to Service Objectives and Performance Benchmarks), §26.55 of this title (relating to Monitoring of Service), §26.57 of this title (relating to Requirements for a Certificate Holder's Use of an Alternate Technology to Meet its Provider of Last Resort Obligation), §26.89 of this title (relating to Information Regarding Rates and Services of Nondominant Carriers), §26.107 of this title (relating to Registration of Interexchange Carriers (IXCs), Prepaid Calling Services Companies (PPC), and Other Nondominant Telecommunications Carriers), §26.128 of this title (relating to Telephone Directories), §26.206 of this title (relating to Depreciation Rates), and implementation of the requests would not cause unreasonable inefficiencies, unreasonable costs, or other detriment to the network of the CTU receiving the requests.

- (A) Interconnecting CTUs shall ensure that customers of CTUs shall not have to dial additional digits or incur dialing delays that exceed industry standards in order to complete local calls as a result of interconnection.
- (B) Interconnecting CTUs shall provide each other non-discriminatory access to signaling systems, databases, facilities, and information as required to ensure interoperability of networks and efficient, timely provision of services to customers.
- (C) Interconnecting CTUs shall provide each other Common Channel Signaling System Seven (SS7) connectivity where technically available.
- (D) Interconnecting CTUs shall be permitted a minimum of one point of interconnection in each exchange area or group of contiguous exchange areas within a single local access and transport area (LATA), as requested by the interconnecting CTU, and may negotiate with the other CTU for additional interconnection points. Interconnecting CTUs shall agree to construct and/or lease and maintain the facilities necessary to connect their networks, either by having one CTU provide the entire facility or by sharing the construction and maintenance of the facilities necessary to connect their networks. The financial responsibility for construction and maintenance of such facilities shall be borne by the party who constructs and maintains the facility, unless the parties involved agree

to other financial arrangements. Each interconnecting CTU shall be responsible for delivering its originating traffic to the mutually-agreed-upon point of interconnection or points of interconnection. Nothing herein precludes a CTU from recovering the costs of construction and maintenance of facilities if such facilities are used by other CTUs.

- (E) Interconnecting CTUs shall establish joint procedures for troubleshooting the portions of their networks that are jointly used. Each CTU shall be responsible for maintaining and monitoring its own network such that the overall integrity of the interconnected network is maintained with service quality that is consistent with industry standards and is in compliance with §26.53 of this title.
- (F) If a CTU has sufficient facilities in place, it shall provide intermediate transport arrangements between other interconnecting CTUs, upon request. A CTU providing intermediate transport shall not negotiate termination on behalf of another CTU, unless the terminating CTU agrees to such an arrangement. Upon request, DCTUs within major metropolitan areas will contact other CTUs and arrange meetings, within 15 days of such request, in an effort to facilitate negotiations and provide a forum for discussion of network efficiencies and inter-company billing arrangements.
- (G) Each interconnecting CTU shall be responsible for ensuring that traffic is properly routed to the connected CTU and jurisdictionally

identified by percent usage factors or in a manner agreed upon by the interconnecting CTUs.

- (H) Interconnecting CTUs shall allow each other non-discriminatory access to all facility rights-of-way, conduits, pole attachments, building entrance facilities, and other pathways, provided that the requesting CTU has obtained all required authorizations from the property owner and/or appropriate governmental authority.
 - (I) Interconnecting CTUs shall provide each other physical interconnection in a non-discriminatory manner. Physical collocation for the transmission of local exchange traffic shall be provided to a CTU upon request, unless the CTU from which collocation is sought demonstrates that technical or space limitations make physical collocation impractical. Virtual collocation for the transmission of local exchange traffic shall be implemented at the option of the CTU requesting the interconnection.
 - (J) Each interconnecting CTU shall be responsible for contacting the North American Numbering Plan (NANP) administrator for its own NXX codes and for initiating NXX assignment requests.
- (3) **Principles regarding billing arrangements.**
- (A) Interconnecting CTUs shall cooperatively provide each other with both answer and disconnect supervision as well as accurate and timely exchange of information on billing records to facilitate billing to customers, to determine intercompany settlements for local and non-

local traffic, and to validate the jurisdictional nature of traffic, as necessary. Such billing records shall be provided in accordance with national industry standards. For billing interexchange carriers for jointly provided switched access services, such billing records shall include meet point billing records, interexchange carrier (IXC) billing name, IXC billing address, and Carrier Identification Codes (CICs). If exchange of CIC codes is not technically feasible, interconnecting CTUs shall negotiate a mutually acceptable settlement process for billing IXCs for jointly provided switched access services.

- (B) CTUs shall enter into mutual billing and collection arrangements that are comparable to those existing between and/or among DCTUs, to ensure acceptance of each other's non-proprietary calling cards and operator-assisted calls.
- (C) Upon a customer's selection of a CTU for his or her local exchange service, that CTU shall provide notification to the primary IXC through the Customer Account Record Exchange (CARE) database, or comparable means if CARE is unavailable, of all information necessary for billing that customer. At a minimum, this information should include the name and contact person for the new CTU and the customer's name, telephone number, and billing number. In the event a customer's local exchange service is disconnected at the option of the customer or the CTU, the disconnecting CTU shall provide notification to the primary IXC of such disconnection.

(D) All CTUs shall cooperate with IXCs to ensure that customers are properly billed for IXC services.

(4) **Principles regarding interconnection rates, terms, and conditions.**

(A) Criteria for setting interconnection rates, terms, and conditions. Interconnection rates, terms, and conditions shall not be unreasonably preferential, discriminatory, or prejudicial, and shall be non-discriminatory. The following criteria shall be used to establish interconnection rates, terms, and conditions.

- (i) Local traffic of a CTU which originates and terminates within the mandatory single or multiexchange local calling area available under the basic local exchange rate of a single DCTU shall be terminated by the CTU at local interconnection rates. The local interconnection rates under this clause also apply with respect to mandatory EAS traffic originated and terminated within the local calling area of a DCTU if such traffic is between exchanges served by that single DCTU.
- (ii) If a non-dominant certificated telecommunications utility (NCTU) offers, on a mandatory basis, the same minimum ELCS calling scope that a DCTU offers under its ELCS arrangement, a NCTU shall receive arrangements for its ELCS traffic that are not less favorable than the DCTU provides for terminating mandatory ELCS traffic.

- (iii) With respect to local traffic originated and terminated within the local calling area of a DCTU but between exchanges of two or more DCTUs governed by mandatory EAS arrangements, DCTUs shall terminate local traffic of NCTUs at rates, terms, and conditions that are not less favorable than those between DCTUs for similar mandatory EAS traffic for the affected area. A NCTU and a DCTU may agree to terms and conditions that are different from those that exist between DCTUs for similar mandatory EAS traffic. The rates applicable to the NCTU for such traffic shall reflect the difference in costs to the DCTU caused by the different terms and conditions.
- (iv) With respect to traffic that originates and terminates within an optional flat rate calling area, whether between exchanges of one DCTU or between exchanges of two or more DCTUs, DCTUs shall terminate such traffic of NCTUs at rates, terms, and conditions that are not less favorable than those between DCTUs for similar traffic. A NCTU and a DCTU may agree to terms and conditions that are different from those that exist between DCTUs for similar optional EAS traffic. The rates applicable to the NCTU for such traffic shall reflect the difference in costs to the DCTU caused by the different terms and conditions.

- (v) A DCTU with more than one million access lines and a NCTU shall negotiate new EAS arrangements in accordance with the following requirements.
- (I) For traffic between an exchange and a contiguous metropolitan exchange local calling area, as defined in §26.5 of this title, the DCTU shall negotiate with a NCTU for termination of such traffic if the NCTU includes such traffic as part of its customers' local calling area. These interconnection arrangements shall be not less favorable than the arrangements between DCTUs for similar EAS traffic.
- (II) For traffic that does not originate or terminate within a metropolitan exchange local calling area, the DCTU shall negotiate with a NCTU for the termination of traffic between the contiguous service areas of the DCTU and the NCTU if the NCTU includes such traffic as part of its customers' local calling area and such traffic originates in an exchange served by the DCTU. These interconnection arrangements shall be not less favorable than the arrangements between DCTUs for similar EAS traffic.
- (III) A NCTU shall have the same obligation to negotiate similar EAS interconnection arrangements with respect

to traffic between its service area and a contiguous exchange of the DCTU if the DCTU includes such traffic as part of its customers' local calling area.

- (vi) NCTUs are not precluded from establishing their own local calling areas or prices for purposes of retail telephone service offerings.
- (B) Establishment of rates, terms, and conditions.
- (i) CTUs involved in interconnection negotiations shall ensure that all reasonable negotiation opportunities are completed prior to the termination of the first commercial call. The date upon which the first commercial call between CTUs is terminated signifies the beginning of a nine-month period in which each CTU shall reciprocally terminate the other CTU's traffic at no charge, in the absence of mutually negotiated interconnection rates. Reciprocal interconnection rates, terms, and conditions shall be established pursuant to the compulsory arbitration process in subsection (g) of this section. In establishing these initial rates and three years from termination of the first commercial call, no cost studies shall be required from a new CTU.
 - (ii) An ILEC may adopt the tariffed interconnection rates approved for a larger ILEC or interconnection rates of a larger ILEC resulting from negotiations without providing the

commission any additional cost justification for the adopted rates. If an ILEC adopts the tariffed interconnection rates approved for a larger ILEC, it shall file tariffs referencing the appropriate larger ILEC's rates. If an ILEC adopts the interconnection rates of a larger ILEC, the new CTU may adopt those rates as its own rates by filing tariffs referencing the appropriate larger ILEC's rates. If an ILEC chooses to file its own interconnection tariff, the new CTU must also file its own interconnection tariff.

- (C) Public disclosure of interconnection rates, terms, and conditions. Interconnection rates, terms, and/or conditions shall be made publicly available as provided in subsection (h) of this section.

(e) **Minimum interconnection arrangements.**

- (1) Pursuant to mutual agreements, interconnecting CTUs shall provide each other non-discriminatory access to ancillary services such as repair services, E9-1-1, operator services, white pages telephone directory listing, publication and distribution, and directory assistance. The following minimum terms and conditions shall apply:
- (A) Repair services. For purposes of this section, a CTU shall be required to provide repair services for its own facilities regardless of whether such facilities are used by the CTU for retail purposes, or provided by

the CTU for resale purposes, or whether the facilities are ordered by another CTU for purposes of collocation.

(B) E-9-1-1 services. E-9-1-1 services include automatic number identification (ANI), ANI and automatic location identification (ALI) selective routing, and/or any combination of 9-1-1 features required by the 9-1-1 administrative entity or entities responsible for the geographic area involved.

(i) As a prerequisite to providing local exchange telephone service to any customer or any other service whereby a customer may dial 9-1-1 and thereafter, a CTU must meet the following requirements.

(I) The CTU is responsible for ordering the dedicated 9-1-1 trunk groups necessary to provide E9-1-1 service as approved by the appropriate 9-1-1 administrative entity or entities in the relevant 9-1-1 service agreement(s), and subject to the written process for documenting “unnecessary dedicated 9-1-1 trunks” in clause (vi)(I) of this subparagraph. Connection with the appropriate CTU in the provision of 9-1-1 service may be either directly or indirectly in a manner approved by the appropriate 9-1-1 administrative entity or entities.

(II) The CTU is responsible for enabling all its customers to dial the three digits 9,1,1 to access 9-1-1 service.

- (III) The CTU is responsible for providing the ANI to the appropriate CTU operating the 'E911 selective routers, 9-1-1 tandems, IP-based 9-1-1 systems, NG9-1-1 systems, or appropriate PSAPs, as applicable. The ANI must include both the NPA or numbering plan digit (NPD), a component of the traditional 9-1-1 signaling protocol that identifies 1 of 4 possible NPAs, as appropriate, and the local telephone number of the 9-1-1 calling customer that can be used to successfully complete a return call to the customer.
- (IV) The CTU is responsible for routing a 9-1-1 customer call, as well as interconnecting traffic on its network, to the appropriate E911 selective routers, 9-1-1 tandems, IP-based 9-1-1 systems, NG9-1-1 systems, or PSAPs , as applicable, based on the ANI and/or ALI. The appropriate 9-1-1 administrative entity or entities or the 9-1-1 network services provider, as applicable, shall provide specifications to the CTU for routing purposes.
- (V) The CTU is responsible for providing the ALI for each of its customers. The ALI shall consist of the calling customer name, physical location, appropriate emergency service providers, and other similar

standard ALI location data specified by the appropriate 9-1-1 administrative entity. For purposes of this subclause, other similar standard ALI data does not include supplemental data not part of the standard ALI location record.

- (ii) Each CTU shall timely provide to the appropriate 911 administrative entity and the appropriate 9-1-1 database management services provider accurate and timely current information for all published, unpublished (nonpublished), and unlisted (nonlisted) information associated with its customers for the purposes of emergency or E-911 services.
 - (I) For purposes of this clause, a CTU timely provides the information if, within 24 hours of receipt, it delivers the information to the appropriate 9-1-1 database management services provider, or if the CTU is the appropriate 9-1-1 database management services provider, it places the information in the 9-1-1 database.
 - (II) For purposes of this clause, the information sent by a CTU to the 9-1-1 database management services provider and the information used by the 9-1-1 database management services provider shall be maintained in a fashion to ensure that it is accurate at a

percentage as close to 100% as possible. "Accurate" means a record that correctly routes a 9-1-1 call and provides correct location information relating to the origination of such call. "Percentage" means the total number of accurate records in that database divided by the total number of records in that database. In determining the accuracy of records, a CTU shall not be held responsible for erroneous information provided to it by a customer or another CTU.

- (III) Interconnecting CTUs shall execute confidentiality agreements with each other, as necessary, to prevent the unauthorized disclosure of unpublished/unlisted numbers. Interconnecting CTUs shall be allowed access to the ALI database or its equivalent by the appropriate 9-1-1 database management services provider for verification purposes. The appropriate 9-1-1 administrative entity shall provide non-discriminatory access to the master street address guide.
- (iii) Each CTU is responsible for developing a 9-1-1 disaster recovery service restoration plan with input from the appropriate 9-1-1 administrative entities. This plan shall identify the actions to be taken in the event of a network-based

9-1-1 service failure. The goal of such actions shall be the efficient and timely restoration of 9-1-1 service. Each CTU shall notify the appropriate 9-1-1 administrative entity or entities of any changes in the CTU's network-based services and other services that may require changes to the plan.

- (iv) Interconnecting CTUs shall provide each other and the appropriate 9-1-1 administrative entity or entities notification of scheduled outages for direct dedicated 9-1-1 trunks at least 48 hours prior to such outages. In the event of unscheduled outages for direct dedicated 9-1-1 trunks, interconnecting CTUs shall provide each other and the appropriate 9-1-1 administrative entity or entities immediate notification of such outages.
- (v) Each NCTU's rates for 9-1-1 service to a public safety answering point shall be presumed to be reasonable if they do not exceed the rates charged by the ILEC for similar service.
- (vi) Unless otherwise determined by the commission, nothing in this rule, any interconnection agreement, or any commercial agreement may be interpreted to supersede the appropriate 9-1-1 administrative entity's authority to migrate to newer functionally equivalent IP-based 9-1-1 systems or NG9-1-1 systems or the 9-1-1 administrative entity's authority to

require the removal of unnecessary direct dedicated 9-1-1 trunks, circuits, databases, or functions.

- (I) For purposes of this clause, “unnecessary direct dedicated 9-1-1 trunks” means those dedicated 9-1-1 trunks that generally would be part of a local interconnection arrangement but for: the CTU’s warrant in writing that the direct dedicated 9-1-1 trunks are unnecessary and all 9-1-1 traffic from the CTU will be accommodated by another 9-1-1 service arrangement that has been approved by the appropriate 9-1-1 administrative entity or entities; and written approval from the appropriate 9-1-1 entity or entities accepting the CTU’s warrant. A 9-1-1 network services provider or CTU presented with such written documentation from the CTU and the appropriate 9-1-1 administrative entity or entities shall rely on the warrant of the CTU and the appropriate 9-1-1 entities.
- (II) Subclause (I) of this clause is intended to promote and ensure collaboration so that 9-1-1 service architecture and provisioning modernization can proceed expeditiously for the benefit of improvements in the delivery of 9-1-1 emergency services. Subclause (I) of this clause is not intended to require or authorize a 9-1-

1 administrative entity's rate center service plan specifications or a 9-1-1 network architecture deviation that causes new, material cost shifting between telecommunications providers or between telecommunications providers and 9-1-1 administrative entities. Examples of such a deviation would be points of interconnection different from current LATA configurations and requiring provisioning of the 9-1-1 network with a similar type deviation that may involve new material burdens on competition or the public interest.

- (C) Operator services. Interconnecting CTUs shall negotiate to ensure the interoperability of operator services between networks, including but not limited to the ability of operators on each network to perform such operator functions as reverse billing, line verification, call screening, and call interrupt.
- (D) White pages telephone directory and directory assistance. Interconnecting CTUs shall negotiate to ensure provision of white pages telephone directory and directory assistance services.
 - (i) The telephone numbers and other appropriate information of the customers of NCTUs shall be included on a non-discriminatory basis in the DCTU's white pages directory associated with the geographic area covered by the white

pages telephone directory published by the DCTUs. Similarly, any white pages telephone directory provided by a NCTU to its customers shall have corresponding DCTU listings available on a non-discriminatory basis. The entries of NCTU customers in the DCTU white pages telephone directory shall be interspersed in correct alphabetical sequence among the entries of the DCTU customers and shall be no different in style, size, or format than the entries of the DCTU customers, unless requested otherwise by the NCTU. The CTU or its affiliate publishing a white pages telephone directory on behalf of the CTU shall not directly charge the customer of another CTU located in the geographic areas covered by the white pages telephone directory for white pages listings or directory.

- (ii) Listings of all customers located within the local calling area of a NCTU, but not located within the local calling area of the DCTU publishing the white pages telephone directory, shall be included in a separate section of the DCTU's white pages telephone directory at the option of the NCTU.
- (iii) CTUs shall provide directory listings and related updates to the CTU or its affiliate publishing a white pages telephone directory on behalf of the CTU or to any CTU providing directory assistance, in a timely manner to ensure inclusion in

the annual white page listings and provision of directory assistance service that complies with §26.128 of this title. The CTU or its affiliate publishing a white pages telephone directory on behalf of the CTU shall be responsible for providing all other CTUs with timely information regarding deadlines associated with its published white pages telephone directory.

- (iv) CTUs shall, upon request, provide accurate and current subscriber listings (name, address, telephone number) and updates in a readily usable format and in a timely manner, on a non-discriminatory basis, to publishers of yellow pages telephone directory. CTUs shall not provide listings of subscribers desiring non-listed status for publication purposes.
- (v) White pages telephone directories shall be distributed to all customers located within the geographic area covered by the white pages telephone directory on non-discriminatory terms and conditions by the CTU or its affiliate publishing the white pages telephone directory.
- (vi) A CTU or its affiliate that publishes a white pages telephone directory on behalf of the CTU shall provide a single page per CTU in the information section of the white pages telephone directory, for the CTU to convey critical customer contact information regarding emergency services, billing and service

information, repair services and other pertinent information. The CTU's pages shall be arranged in alphabetical order. Additional access to the information section of the white pages telephone directory shall be subject to negotiations.

- (vii) CTUs must provide information that identifies customers desiring non-listed and/or non-published telephone numbers and/or non-published addresses to the CTU or its affiliate publishing a white pages telephone directory on behalf of the CTU and to the CTU maintaining the directory assistance database. The CTU or its affiliate publishing a white pages telephone directory on behalf of the CTU shall not divulge such non-listed and/or non-published telephone numbers or addresses and the CTU maintaining the directory assistance database shall not divulge such non-published telephone numbers or addresses.
 - (viii) CTUs shall provide each other non-discriminatory access to directory assistance databases.
- (2) At a minimum, interconnecting CTUs shall negotiate to ensure the following:
- (A) Non-discriminatory access to databases such as 800 and Line Information Data Base (LIDB) where technically feasible, to ensure interoperability between networks and the efficient, timely provision of service to customers;
 - (B) non-discriminatory access to Telecommunications Relay Service;

- (C) Common Channel Signaling interconnection including transmission of privacy indicator where technically available;
- (D) non-discriminatory access to all signaling protocols and all elements of signaling protocols used in routing local and interexchange traffic, including signaling protocols used to query call processing databases, where technically feasible;
- (E) number portability and the inclusion of the NCTU's NXX code(s) in the Local Exchange Routing Guide and related systems;
- (F) non-discriminatory handling, including billing, of mass announcement/audiotext calls including, but not limited to, 900 and 976 calls;
- (G) provision of intercept services for a specific telephone number in the event a customer discontinues service with one CTU, initiates service with another CTU, and the customer's telephone number changes;
- (H) cooperative engineering, operations, maintenance and billing practices and procedures; and
- (I) non-discriminatory access to Advanced Intelligent Network (AIN), where technically available.

(f) **Negotiations.**

- (1) CTUs and other negotiating parties shall engage in good-faith negotiations and cooperative planning as necessary to achieve mutually agreeable interconnection arrangements.

- (2) Before terminating its first commercial telephone call, each CTU requesting interconnection shall negotiate with each CTU or other negotiating party that is necessary to complete all telephone calls, including local service calls and EAS or ELCS calls, made by or placed to the customers of the requesting CTU. Upon request, DCTUs within major metropolitan calling areas will contact other CTUs and arrange meetings, within 15 days of such request, in an effort to facilitate negotiations and provide a forum for discussions of network efficiencies and intercompany billing arrangements.
- (3) Unless the negotiating parties establish a mutually agreeable date, negotiations are deemed to begin on the date when the CTU or other negotiating party from which interconnection is being requested receives the request for interconnection from the CTU seeking interconnection. The request shall:
 - (A) be in writing and hand-delivered; sent by certified mail or by facsimile;
 - (B) identify the initial specific issues to be resolved, the specific underlying facts, and the requesting CTU's proposed resolution of each issue;
 - (C) provide any other material necessary to support the request, included as appendices; and
 - (D) provide the identity of the person authorized to negotiate for the requesting CTU.

- (4) The requesting CTU may identify additional issues for negotiation without causing an alteration of the date on which negotiations are deemed to begin.
- (5) The CTU or negotiating party from which interconnection is sought shall respond to the interconnection request no later than 14 working days from the date the request is received. The response shall:
 - (A) be in writing and hand-delivered; sent by certified mail or by facsimile;
 - (B) respond specifically to the requesting party's proposed resolution of each initial issue identified by the requesting party, identify the specific underlying facts upon which the response is based and, if the response is not in agreement with the requesting party's proposed resolution of each issue, the responding party's proposed resolution of each issue;
 - (C) provide any other material necessary to support the response, included as appendices; and
 - (D) provide the identity of the person authorized to negotiate for the responding party.
- (6) At any point during the negotiations required under this subsection, any CTU or negotiating party may request the commission designee(s) to participate in the negotiations and to mediate any differences arising in the course of the negotiation.
- (7) Interconnecting CTUs may, by written agreement, accelerate the requirements of this subsection with respect to a particular interconnection

agreement except that the requirements of subsection (g)(1)(A) of this section shall not be accelerated.

- (8) Any disputes arising under or pertaining to negotiated interconnection agreements may be resolved pursuant to Chapter 21, Subchapter E, of this title (relating to Post-Interconnection Agreement Dispute Resolution).

(g) **Compulsory arbitration process.**

- (1) A negotiating CTU that is unable to reach mutually agreeable terms, rates, and/or conditions for interconnection with any CTU or negotiating party may petition the commission to arbitrate any unresolved issues. In order to initiate the arbitration procedure, a negotiating CTU:
- (A) shall file its petition with the commission during the period from the 135th to the 160th day (inclusive) after the date on which its request for negotiation under subsection (f) of this section was received by the other CTU involved in the negotiation;
 - (B) shall provide the identity of each CTU and/or negotiating party with which agreement cannot be reached but whose cooperation is necessary to complete all telephone calls made by or placed to the customers of the requesting CTU;
 - (C) shall provide all relevant documentation concerning the unresolved issues;
 - (D) shall provide all relevant documentation concerning the position of each of the negotiating parties with respect to those issues;

- (E) shall provide all relevant documentation concerning any other issue discussed and resolved by the negotiating parties; and
 - (F) shall send a copy of the petition and any documentation to the CTU or negotiating party with which agreement cannot be reached, not later than the day on which the commission receives the petition.
- (2) A non-petitioning party to a negotiation under subsection (f) of this section may respond to the other party's petition and provide such additional information as it wishes within 25 days after the commission receives the petition.
 - (3) The compulsory arbitration process shall be completed not later than nine months after the date on which a CTU receives a request for interconnection under subsection (f) of this section.
 - (4) Any disputes arising under or pertaining to arbitrated interconnection agreements may be resolved pursuant to Chapter 21, Subchapter E of this title.
- (h) **Filing of rates, terms, and conditions.**
- (1) Rates, terms and conditions resulting from negotiations, compulsory arbitration process, and statements of generally available terms.
 - (A) A CTU from which interconnection is requested shall file any agreement, adopted by negotiation or by compulsory arbitration, with the commission. The commission shall make such agreement available for public inspection and copying within ten days after the

agreement is approved by the commission pursuant to subparagraphs (C) and (D) of this paragraph.

- (B) An ILEC serving greater than five million access lines may prepare and file with the commission, a statement of terms and conditions that it generally offers within the state pursuant to 47 United States Code §252(f) (1996). The commission shall make such statement available for public inspection and copying within ten days after the statement is approved by the commission pursuant to subparagraph (E) of this paragraph.
- (C) The commission shall reject an agreement (or any portion thereof) adopted by negotiation if it finds that:
 - (i) the agreement (or any portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
 - (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.
- (D) The commission shall reject an agreement (or any portion thereof) adopted by compulsory arbitration, under subsection (g) of this section, pursuant to guidelines found in 47 United States Code §252(e)(2)(B) (1996).
- (E) The commission shall review the statement of generally available terms filed under subparagraph (B) of this paragraph, pursuant to guidelines found in 47 United States Code §252(f) (1996). The submission or approval of a statement under this paragraph shall not

relieve an ILEC serving greater than five million access lines of its duty to negotiate the terms and conditions of an agreement pursuant to 47 United States Code §251 (1996).

- (2) **Rates, terms and/or conditions among DCTUs.** Within 15 days of a request from a CTU negotiating interconnection arrangements with a DCTU, a non-redacted version of any agreement reflecting the rates, terms, and conditions between and/or among DCTUs which relate to interconnection arrangements for similar traffic shall be disclosed to the CTU, subject to commission-approved non-disclosure or protective agreement. A non-redacted version of the same agreement shall be disclosed to commission staff at the same time if requested, subject to commission-approved non-disclosure or protective agreement.

- (i) **Customer safeguards.**

- (1) **Requirements for provision of service to customers.** Nothing in this section or in the CTU's tariffs shall be interpreted as precluding a customer of any CTU from purchasing local exchange service from more than one CTU at a time. No CTU shall connect, disconnect, or move any wiring or circuits on the customer's side of the demarcation point without the customer's express authorization as specified in §26.130 of this title, (relating to Selection of Telecommunications Utilities).
- (2) **Requirements for CTUs ceasing operations.** In the event that a CTU ceases its operations, it is the responsibility of the CTU to notify the

commission and all of the CTU's customers at least 61 working days in advance that their service will be terminated. The notification shall include a listing of all alternative service providers available to customers in the exchange and shall specify the date on which service will be terminated.

- (3) **Requirements for service installations.** DCTUs that interconnect with NCTUs shall be responsible for meeting the installation of service requirements under §26.54 of this title in providing service to the NCTU. NCTUs shall make a good-faith effort to meet the requirements for installation in §26.54 of this title, and may negotiate with the DCTU to establish a procedure to meet this goal.

(A) For those customers for whom the NCTU provides dial tone but not the local loop, 95% of the NCTU's service orders shall be completed in no more than ten working days from request for service, unless a later date is agreed to by the customer.

(B) For those customers for whom the NCTU does not provide dial tone and resells the telephone services of a DCTU, 95% of the NCTU's service orders shall be completed in no more than seven working days from request for service, unless the customer agrees to a later date.

(C) For those customers where the NCTU uses facilities other than a DCTUs' resale facilities obtained through Public Utility Regulatory Act §60.041, the NCTU shall complete service orders within 30 calendar days from request of service, unless a later date is agreed to by the customer.

- (D) The DCTU shall not discriminate between its customers and NCTUs if the DCTU is able to install service in less than the time permitted under §26.54 of this title.

§26.311. Information Relating to Operator Services.

- (a) **Purpose.** The provisions of this subchapter are intended to ensure that competitive operator services are provided in a fair and reasonable manner and to maximize consumer choice by ensuring that consumers have access to their carriers of choice when using telephones intended for use by the public.
- (b) **Application.** This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Act (PURA) §52.154.
- (c) **Definition.** The term “rate information,” when used in this subchapter, shall mean all charges ultimately charged to the end user by the operator service provider (OSP), including any surcharges, fees, and any other form of compensation charged by the OSP on behalf of the call aggregator.
- (d) **Complaints relating to operator services.**
- (1) The OSP shall have a toll-free telephone number that callers may use, during normal business hours, to voice complaints and make inquiries. After normal business hours, the OSP shall have an answering machine/mechanism to receive complaints.
 - (2) Section 26.30 of this title (relating to Complaints) shall apply to all complaints under this subchapter.

- (3) The commission may formally investigate any complaint against any OSP, interexchange carrier or dominant certificated telecommunications utility alleged to have violated the provisions of this subchapter. The company shall be given an opportunity to informally resolve any complaint involving violation of these rules. If no resolution is achieved informally, the commission may formally investigate the complaint upon its own motion or upon request of the original complainant.
- (e) **Enforcement.** Upon proper notice, evidentiary hearing, and determination that a violation has occurred or is about to occur, the commission may take action to stop, correct or prevent the violation. Any OSP found to be in violation of provisions of this subchapter is subject to administrative penalties, civil penalties, and injunctive relief pursuant to the PURA §§15.023, 15.028, and 15.021.

§26.313. General Requirements Relating to Operator Services.

- (a) **Application.** This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Act (PURA) §52.154.
- (b) **Requirements to provide operator service.**
- (1) An operator service provider (OSP) that provides end user operator services for a call aggregator through a telephone that is intended for public use must do so pursuant to a contract with the call aggregator, as a presubscribed interexchange carrier, or, in the case of a dominant certificated telecommunications utility (DCTU), pursuant to a tariff approved by the commission.
 - (2) Notwithstanding the provisions of paragraph (1) of this subsection, an OSP that owns or otherwise controls telephones that are intended for public use shall for those telephones comply with all provisions of this subchapter otherwise required to be included in contracts between OSPs and call aggregators, without the necessity of a contract.
 - (3) Where a different OSP is presubscribed for operator services at pay telephones owned by a DCTU, the DCTU shall for those telephones comply with all provisions of this subchapter otherwise required to be included in contracts between OSPs and call aggregators.
 - (4) If a DCTU or presubscribed interexchange carrier provides operator services through telephones that are intended for public use, other than those

telephones subject to paragraphs (2) and (3) of this subsection, and pays fees or other forms of compensation to a call aggregator, the DCTU or presubscribed interexchange carrier shall do so pursuant to a contract with the call aggregator.

- (c) **Requirements before call is completed.** The provider of operator services shall:
- (1) audibly and distinctly identify itself to the customer upon answering calls;
 - (2) audibly and distinctly identify itself to the billed party if the billed party is different from the caller;
 - (3) quote rate information at the caller's request, without charge, 24 hours a day, seven days a week; and
 - (4) permit the caller to terminate the call at no charge prior to completion of the call by the OSP.
- (d) **Requirements for uncompleted call.** There shall be no charge to the caller for any uncompleted call.
- (1) No OSP shall knowingly bill for uncompleted calls.
 - (2) If the OSP cannot determine with certainty that a call was completed, it shall provide a full credit for any call of one minute or less upon being informed by a customer that the call was not completed.
 - (3) An uncompleted call includes, but shall not be limited to:
 - (A) calls terminating to an intercept recording, line intercept operator, or a busy tone; or

- (B) calls that are not answered.
 - (4) An uncompleted call does not include calls using busy line interrupt, line status verification, or directory assistance services.
- (e) **Requirement to provide access to a live operator.**
- (1) Each telecommunications utility that provides operator services shall ensure that a caller may access a live operator at the beginning of all automated operator-assisted calls through a method designed to be easily and clearly understandable and accessible to the caller. This requirement applies only to “0-” calls where the caller reaches an automated operator. Within 30 days of initially providing operator services each such telecommunications utility shall file in the Central Records Office of the commission, for review, a document describing the method by which the utility is providing access to a live operator, as provided by the Public Utility Regulatory Act §55.088.
 - (2) This subsection applies regardless of the method by which the telecommunications utility provides the operator service.
 - (3) The requirements of this subsection shall not apply to telephones located in confinement facilities.
- (f) **Call splashing.** Call splashing is call transferring (whether caller requested or OSP initiated) that results in a call being rated and/or billed from a point different from that where the call originated. Call splashing shall not be allowed unless a waiver of the access requirements in §26.319(1)(A) of this title (relating to Access to the

Operator of a Local Exchange Company (LEC)) has been granted pursuant to §26.319(3) of this title and unless:

- (1) the originating OSP first clearly and explicitly notifies the caller that the call will be splashed and may result in rating and/or billing of the call from a point different from that where the call originated; and
- (2) the originating OSP allows the caller to abort the call without charge after notification that the call will be splashed.

(g) **Other requirements.**

- (1) OSPs that are not DCTUs are subject to the requirements contained in the Public Utility Regulatory Act and the commission's substantive rules for nondominant telecommunications utilities.
- (2) If an OSP provides a local exchange company with information regarding end-user access to the OCP, the OSP must provide a single access code; must detail, by NPA-NXX, where the access code can be used to access the OSP; and must provide the local exchange company with appropriate instructions for use of the access code. The OSP is responsible for ensuring that the access code specified is available for each NPA-NXX listed and for updating the information.

§26.317. Information to be Provided at the Telephone Set.

- (a) This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Act (PURA) §52.154.
- (b) A contract between an operator service provider (OSP) and a call aggregator for the provision of operator services through telephones that are intended for public use shall require the call aggregator to attach to each telephone set that has access to the operator service and that is intended for public use, a card furnished by the OSP that provides:
- (1) the name of the OSP;
 - (2) instructions for accessing the OSP, with a statement that the OSP will quote rate information upon request at no charge to the caller, 24 hours a day, seven days a week, or a statement that instructions for obtaining rate information are available at a designated toll-free telephone number, 24 hours a day, seven days a week;
 - (3) instructions for accessing the operator of a local exchange company that meets the requirements of §26.315(d) of this title (relating to Requirements for Dominant Certificated Telecommunications Utilities (DCTUs)), or a statement that instructions for accessing such local exchange company operator are available at a designated toll-free telephone number, 24 hours a day, seven days a week, except local exchange companies meeting the

requirements of §26.315(d) of this title are exempt from this paragraph if the local exchange company is the OSP for which instructions are posted pursuant to paragraph (2) of this subsection;

- (4) instructions for registering a complaint about the service at a designated toll-free telephone number;
- (5) instructions in English and Spanish for accessing emergency service; and
- (6) a notice that states, “You may use another long distance carrier. Follow your carrier’s instructions, or contact the local exchange company operator for assistance.” or, in the case of telephones that directly route “0-” calls to the local exchange company operator, a notice that states, “You may use another long distance carrier. Follow your carrier’s instructions, or dial “0” for assistance.” (The local exchange company referred to in this paragraph must serve the area and meet the requirements of §26.315(d) of this title.) The notice required by this paragraph may use the term “local exchange carrier operator” in place of the term “local exchange company operator.”

- (c) Notwithstanding subsection (b) of this section, in the case of pay telephones owned by the DCTU, where the DCTU is the OSP for intraLATA operator service and another carrier is the OSP for interLATA operator service, the interLATA OSP shall inform the DCTU of the appropriate information to be posted, and the DCTU shall post the information required by subsection (b)(1), (2) and (4) of this section for the interLATA OSP. In addition, the DCTU shall post the information required by subsection (b)(5) and (6) of this section. After initial information cards are posted,

DCTUs may file tariffs to recover from the OSPs presubscribed to pay telephones owned by the DCTUs the incremental cost for maintaining updated information cards plus a reasonable contribution.

- (d) The commission may approve applications for modification of the requirements contained in this section upon showing of good cause. Applications for modification may be filed by the call aggregator or by the OSP. The commission shall process applications for modification using the following criteria and procedures:
- (1) Each application for modification shall contain a certificate of service attesting that a copy of the request has been served upon the Office of Public Utility Counsel.
 - (2) Each application for modification shall clearly set forth the good cause for approval of the modification.
 - (3) Each application for modification shall initially be assigned a project control number, assigned to a presiding officer, and reviewed administratively.
 - (A) No later than 30 days after the filing date of the application, interested persons other than the commission staff and the Office of Public Utility Counsel may file written comments or recommendations concerning the application. No later than 60 days after the filing of the application, the commission staff shall, and the Office of Public Utility Counsel may, file written comments or recommendations concerning the application.

- (B) Within 90 days of filing, after administrative review, the presiding officer shall approve, deny, or docket the application. The presiding officer may postpone a decision on the application beyond the 90th day after filing if he or she finds that additional information is needed.
 - (4) Any participating party may request, within ten days of the presiding officer's order approving or denying the application, that the application be docketed, and upon such request, the application shall be docketed.
 - (5) If the presiding officer either approves or denies the application for modification and no participating party has requested that the application be docketed, a copy of the presiding officer's ruling shall be provided to the commission. The commission may, within 40 days of the presiding officer's ruling, overrule the approval or denial and order that the application for modification be docketed.
- (e) The requirements of this section shall not apply to telephones located in confinement facilities.

§26.319. Access to the Operator of a Local Exchange Company (LEC).

- (a) This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Act (PURA) §52.154.
- (b) A contract between an operator service provider (OSP) and a call aggregator for the provision of operator services through telephones that are intended for public use shall require that the call aggregator allow access to the operator of a local exchange company that meets the requirements enumerated in §26.315(d) of this title (relating to Requirements for Dominant Certificated Telecommunications Utilities (DCTUs)) and serves the area from which the call is made, and to other telecommunications utilities unless otherwise provided in paragraph (3) of this subsection.
- (1) The access required by this subsection shall be provided subject to the conditions contained in subparagraphs (A) - (C) of this paragraph.
- (A) Access to such local exchange company operator shall be accomplished either:
- (i) by directly routing all “0-” calls to the local exchange company operator, without charge to the caller; or
- (ii) by transfer or redirection of the call by the OSP, without charge to the caller, in accordance with the requirements of subclauses (I)-(III) of this clause:

- (I) the OSP shall transfer or redirect the call to such local exchange company operator serving the originating area;
 - (II) the OSP shall transfer or redirect the call to such local exchange company operator in such a way that the local exchange company operator receives all signaling information (e.g., ANI and OLS) that would have been received by the local exchange operator if the call had been directly routed to the local exchange company; and
 - (III) the OSP shall be in compliance with the requirements of §26.321 of this title (relating to 9-1-1 Calls, “0-” Calls, and End User Choice).
- (B) Access to interexchange carriers by “950-XXXX” and “1-800” numbers shall not be blocked.
- (C) Access to interexchange carriers by “1010XXX+0” (whether “1010XXX+0+” or “1010XXX+0-”) dialing shall not be blocked if the end office serving the originating line has originating line screening capability. A nonpresubscribed interexchange carrier shall not bill the call aggregator or the presubscribed interexchange carrier for local or toll messages originated at the call aggregator’s facility by use of “1010XXX+0” (whether “1010XXX+0+” or “1010XXX+0-”) dialing, or where the calls originated at the call aggregator’s facility

and otherwise reached an operator, if the call aggregator has subscribed to the necessary local exchange company-provided outgoing call screening or has otherwise provided the necessary call screening to ensure that appropriate originating line screening is transmitted with each call.

- (2) The local exchange company that provides local service to the call aggregator shall provide to the call aggregator, upon request, the names, with addresses or telephone numbers, of interexchange carriers that can be accessed by use of “1010XXX” dialing from the call aggregator’s facilities.
- (3) Waivers to the access requirement may be granted by the commission to prevent fraudulent use of telephone services or for other good cause. An application under subparagraph (B) of this paragraph is not required for any generic waiver granted by subparagraph (A) of this paragraph.
 - (A) The commission finds that the following generic waivers of the access requirement are required to prevent fraudulent use.
 - (i) Access to interexchange carriers by “1010XXX+0” (whether “1010XXX+0+” or “1010XXX+0-”) dialing may be blocked if the end office serving the originating line does not have originating line screening capability.
 - (ii) Access to interexchange carriers by “1010XXX+1” dialing may be blocked.

- (iii) Access to the local exchange carrier operator and to other telecommunications utilities from telephones located in confinement facilities may be blocked.
- (B) Applications for waiver of the requirement for access to the local exchange carrier operator or to other telecommunications utilities to prevent fraudulent use of telephone service or for other good cause may be filed by the call aggregator or the OSP. The commission shall process such applications for waiver using the following criteria and procedures:
 - (i) Each application for waiver shall contain a certificate of service attesting that a copy of the application has been served upon the Office of Public Utility Counsel and affected telecommunications utilities, including those identified in paragraph (2) of this subsection and the local exchange companies serving the affected exchange. If the application for waiver pertains to technical limitations of certain equipment, the application for waiver shall contain a certificate of service attesting that a copy of the application has been served upon the Office of Public Utility Counsel and all telecommunications utilities registered with or certificated by the commission. The certificate shall list the telecommunications utilities on which copies of the application were served.

- (ii) If the application for waiver pertains to technical limitations of certain equipment, the equipment shall be clearly identified in the application, including the manufacturer and the model. The application shall indicate the date of purchase of the equipment by the call aggregator, the extent to which equipment is available to allow the access requirements to be met, the associated costs, and the time requirements associated with equipment modifications.
- (iii) The access requirement shall be enforced while the application for waiver is pending.
- (iv) Each application for waiver shall initially be assigned a project control number, assigned to a presiding officer, and reviewed administratively.
 - (I) No later than 30 days after the filing date of the application, interested persons other than the commission staff and the Office of Public Utility Counsel may file written comments or recommendations concerning the application. No later than 60 days after the filing of the application, the commission staff shall, and the Office of Public Utility Counsel may, file written comments or recommendations concerning the application.

- (II) Within 90 days of the filing, after administrative review, the presiding officer shall approve, deny, or docket the application. The presiding officer may postpone a decision on the application beyond the 90th day after filing if he or she finds that additional information is needed to determine whether good cause exists.
- (v) A participating party may request, within ten days of the presiding officer's ruling approving or denying the application, that the application be docketed, and upon such request, the application shall be docketed.
- (vi) If the presiding officer either approves or denies the application for waiver and no participating party has requested that the application be docketed, a copy of the presiding officer's ruling shall be provided to the commission. The commission may, within 40 days of the presiding officer's ruling, overrule the approval or denial and order that the request for waiver be docketed.

§26.321. 9-1-1 Calls, “0-” Calls, and End User Choice.

- (a) This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Act (PURA) §52.154.
- (b) A contract between an operator service provider (OSP) and a call aggregator for the provision of operator services through telephones that are intended for public use shall require the call aggregator to allow 9-1-1 calls to be outpulsed directly to the public service answering point without requiring a coin or credit card.
- (c) Where end user choice, as defined in §26.5 of this title (relating to Definitions), is not available, a contract between an OSP and a call aggregator for the provision of operator services through telephones that are intended for public use shall require the call aggregator to allow “0-” calls and to directly, without charge to the calling party, route all “0-” calls to an OSP that provides access to emergency services that meet the technical standards set forth in paragraphs (1)-(6) of this subsection. The OSP shall:
- (1) identify the originating telephone number and the location of the originating telephone, except dominant certificated telecommunications utilities (DCTUs) shall be allowed to identify the location using internal sources such as repair service or business office records if such internal sources are accessible to operators for emergency purposes 24 hours a day;

- (2) have a complete and current list of all emergency service provider telephone numbers for each NPA-NXX served, including, but not limited to, police or sheriff, fire, and ambulance;
 - (3) be available 24 hours a day, seven days a week, without requiring a coin or credit card;
 - (4) promptly connect the appropriate emergency service provider;
 - (5) stay on the line until such time as the operator determines that the caller has been connected to the proper emergency service provider; and
 - (6) require that the call aggregator make a test call when equipment providing access to the OSP is installed, serviced, or relocated and at least semi-annually from each originating telephone number subscribed to the OSP, in order to verify the originating telephone number and the location of the telephone, unless the OSP receives automatic number identification (ANI), as defined in §26.5 of this title for that telephone number.
- (d) When and where available, use of end user choice is required.
- (e) The requirements of this section shall not apply to telephones located in confinement facilities.
- (f) Nothing in this section shall be deemed to require the initial routing of “0-” calls from pay telephones owned by a local exchange company that provides access to emergency service providers and that meets the requirements enumerated in §26.315

of this title (relating to Requirements for Dominant Certificated Telecommunications Utilities (DCTUs)) to any OSP other than the local exchange company itself.

§26.342. Pay Telephone Service Tariff Provisions.

- (a) **Application.** This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Act (PURA) §52.154.
- (b) **Available upon request.** Upon formal request for service by any prospective provider of pay telephone service (PTS), a certificated telecommunications utility (CTU) is required to file a tariff providing for interconnection of customer-owned pay telephones, except as otherwise provided in subsection (c) of this section.
- (c) **Special assembly tariffs.** A CTU with fewer than 50 pay telephone lines may provide pay telephone access service (PTAS) pursuant to existing special assembly tariffs; however, in no event may a CTU provide to more than ten special assembly arrangements. Special assembly rates must be computed in accordance with this section. CTUs that provide PTAS pursuant to special assembly tariffs must enter into a written agreement with the PTS provider that requires the provider to perform all functions and obligations specified in §26.344 of this title (relating to Pay Telephone Service Requirements). When a CTU that holds a certificate of convenience and necessity (CCN) makes its initial filing to offer PTAS, the application must include the proposed tariff, cost studies or a commission approved rate for similar services offered by a larger CTU holding a CCN.

- (d) **Enforcement of tariff requirements.** If a PTS provider is in violation of a tariff provision, the CTU must notify the PTS provider of the violation in writing. Such notice must refer to the specific tariff provisions being violated. The notice must state that the PTS provider is subject to disconnection by the CTU of the instrument(s) in violation of the tariff unless the PTS provider corrects the violation and notifies the CTU in writing, within 20 days of receipt of the notice of the violation, that the violation has been corrected. The CTU may disconnect the instrument(s) that are in violation of the tariff on or after the 20th day after receipt of the notice by the PTS provider, if the PTS provider did not notify the CTU in writing within 20 days of receipt of the notice that the violation was corrected. However, if the PTS provider has filed a complaint with the commission regarding the disconnection and has provided the CTU with a copy of the complaint that indicates that the complaint has been filed with the commission within 20 days of receipt of the notice of a violation from the CTU, the CTU may not disconnect the instrument(s) pending resolution of the complaint by the commission.

§26.406. Implementation of the Public Utility Regulatory Act §56.025.

- (a) **Purpose.** The purpose of this section is to implement the provisions of the Public Utility Regulatory Act (PURA) §56.025.
- (b) **Application.** An incumbent local exchange company (ILEC) serving fewer than 31,000 access lines and each cooperative serving fewer than 31,000 access lines, and that on June 1, 2013, is not an electing company under PURA Chapter 58 or 59, may seek to recover funds from the Texas Universal Service Fund (TUSF) under this section in the following circumstances:
- (1) **Commission reduction in the amount of high cost assistance fund.** In the event of a commission order, rule, or policy, the effect of which is to reduce the amount of the high cost assistance fund support received by the ILEC as of February 10, 1998, except an order entered in an individual company revenue requirement proceeding, the commission shall allow, through the universal service fund, an ILEC to replace the reasonably projected reduction in revenues caused by that regulatory action.
 - (2) **Change in federal universal service fund revenues.** In the event of a Federal Communications Commission order, rule, or policy, the effect of which is to change the federal universal service fund revenues of an ILEC or change costs or revenues assigned to the intrastate jurisdiction, the commission shall, through either the universal service fund or an increase to rates if that increase would not adversely impact universal service, replace the reasonably projected change in revenues caused by the regulatory action.

- (3) **Commission change in intraLATA dialing access policy.** In the event of a commission change in its policy with respect to intraLATA “1+” dialing access, the commission shall, through either the universal service fund or an increase to rates if that increase would not adversely impact universal service, replace the reasonably projected reduction in contribution caused by the action. Contribution for purposes of this paragraph equals average intraLATA long distance message telecommunications service (MTS) revenue, including intraLATA toll pooling and associated impacts, per minute less average MTS cost per minute less the average contribution from switched access times the projected change in intraLATA “1+” minutes of use.
- (4) **Other governmental agency action.** In the event of any other governmental agency issuing an order, rule, or policy, the effect of which is to increase costs or decrease revenues of the intrastate jurisdiction, the commission shall, through either the universal service fund or an increase to rates, if that increase would not adversely impact universal service, replace the reasonably projected increase in costs or decrease in revenues caused by that regulatory action.
- (5) **Distribution of support.** After December 31, 2013, the commission may not distribute support granted under this section, including any support granted before that date, to a local exchange company or cooperative that serves greater than 31,000 access lines or that is an electing company under PURA Chapters 58 or 59 on June 1, 2013.

(c) **Requirements of the ILEC.**

- (1) **Burden of proof.** The ILEC seeking to recover funds from the TUSF under this section has the burden of proof.
- (2) **Contents of application.** The ILEC seeking to recover funds from the TUSF under this section shall file an application:
 - (A) complying with the commission's Procedural Rules §22.73 of this title (relating to General Requirements for Applications); and
 - (B) providing the amount requested from the TUSF under this section, the calculation of the amount requested, and detailed documentation and workpapers supporting the calculations.
- (3) **Notice.** The ILEC seeking to recover funds from the TUSF under this section shall provide notice as required by the presiding officer pursuant to the commission's Procedural Rules §22.55 of this title (relating to Notice in Other Proceedings). At a minimum, the notice shall state that the ILEC is requesting to recover funds from the TUSF under this section and the Public Utility Regulatory Act §56.025 and state the amount the ILEC is requesting to recover. At a minimum, the notice shall be published in the *Texas Register*.

(d) **Commission processing of the application.**

- (1) The application shall be processed under the commission's Procedural Rules.

- (2) The commission shall process applications under this section promptly and efficiently.

- (e) **Reporting requirements.** An ILEC awarded support under this section shall provide the TUSF administrator a copy of the commission's final order indicating the amount of support it is to receive under this section.

§26.417. Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF).

- (a) **Purpose.** This section provides the requirements for the commission to designate telecommunications providers as eligible telecommunications providers (ETPs) to receive funds from the Texas Universal Service Fund (TUSF) under §26.403 of this title (relating to the Texas High Cost Universal Service Plan (THCUSP)) and §26.404 of this title (relating to the Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan). Only telecommunications providers designated by the commission as ETPs shall qualify to receive universal service support under these programs.
- (b) **Requirements for establishing ETP service areas.**
- (1) **THCUSP service area.** THCUSP service area shall be based upon wire centers (WCs) or other geographic area as determined appropriate by the commission. A telecommunications provider may be designated an ETP for any or all WCs that are wholly or partially contained within its certificated service area. An ETP must serve an entire WC, or other geographic area as determined appropriate by the commission, unless its certificated service area does not encompass the entire WC, or other geographic area as determined appropriate by the commission.
 - (2) **Small and Rural ILEC Universal Service Plan service area.** A Small and Rural ILEC Universal Service Plan service area for an ETP serving in a small or rural ILEC's territory shall include the entire study area of such small or rural ILEC.

(c) **Criteria for designation of ETPs.**

(1) **Telecommunications providers.** A telecommunications provider, as defined in the Public Utility Regulatory Act (PURA) §51.002(10), shall be eligible to receive TUSF support pursuant to §26.403 or §26.404 of this title in each service area for which it seeks ETP designation if it meets the following requirements:

- (A) the telecommunications provider has been designated an eligible telecommunications carrier, pursuant to §26.418 of this title (relating to the Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds), and provides the federally designated services to customers in order to receive federal universal service support;
- (B) the telecommunications provider defines its ETP service area pursuant to subsection (b) of this section and assumes the obligation to offer any customer within an exchange in its ETP service area, for which the provider receives support under this section, basic local telecommunications services, as defined in §26.403 of this title, at a rate not to exceed 150% of the ILEC's tariffed rate;
- (C) the telecommunications provider offers basic local telecommunications services using either its own facilities, purchased unbundled network elements (UNEs), or a combination of its own facilities, purchased UNEs, and resale of another carrier's services;

- (D) the telecommunications provider renders continuous and adequate service within an exchange in its ETP service area for which the provider receives support under this section, in compliance with the quality of service standards defined in §26.52 of this title (relating to Emergency Operations), §26.53 of this title (relating to Inspections and Tests), and §26.54 of this title (relating to Service Objectives and Performance Benchmarks);
 - (E) the telecommunications provider offers services in compliance with §26.412 of this title (relating to Lifeline Service Programs); and
 - (F) the telecommunications provider advertises the availability of, and charges for, supported services using media of general distribution.
- (2) **ILECs.** If the telecommunications provider is an ILEC, as defined in PURA §51.002(10), it shall be eligible to receive TUSF support pursuant to §26.403 of this title in each service area for which it seeks ETP designation if it meets the requirements of paragraph (1) of this subsection and the following requirements:
- (A) If the ILEC is regulated pursuant to the Public Utility Regulatory Act (PURA) Chapter 58 or 59 it shall either:
 - (i) reduce rates for services determined appropriate by the commission to an amount equal to its THCUSP support amount; or

- (ii) provide a statement that it agrees to a reduction of its THCUSP support amount equal to its CCL, RIC and intraLATA toll revenues.
 - (B) If the ILEC is not regulated pursuant to PURA Chapter 58 or 59 it shall reduce its rates for services determined appropriate by the commission by an amount equal to its THCUSP support amount.
 - (C) Any reductions in switched access service rates for ILECs with more than 125,000 access lines in service in this state on December 31, 1998, that are made in accordance with this section shall be proportional, based on equivalent minutes of use, to reductions in intraLATA toll rates, and those reductions shall be offset by equal disbursements from the universal service fund under PURA §56.021(1). This subparagraph expires August 31, 2007.
- (d) **Designation of more than one ETP.**
- (1) In areas not served by small or rural ILECs, as defined in §26.404(b) of this title, the commission may designate, upon application, more than one ETP in an ETP service area so long as each additional provider meets the requirements of subsection (c) of this section.
 - (2) In areas served by small or rural ILECs as defined in §26.404(b) of this title, the commission may designate additional ETPs if the commission finds that the designation is in the public interest.

(e) **Proceedings to designate telecommunications providers as ETPs.**

- (1) At any time, a telecommunications provider may seek commission approval to be designated an ETP for a requested service area.
- (2) In order to receive support under §26.403 or §26.404 of this title for exchanges purchased from an unaffiliated provider, the acquiring ETP shall file an application, within 30 days after the date of the purchase, to amend its ETP service area to include those geographic areas in the purchased exchanges that are eligible for support.
- (3) If an ETP receiving support under §26.403 or §26.404 of this title sells an exchange to an unaffiliated provider, it shall file an application, within 30 days after the date of the sale, to amend its ETP designation to exclude, from its designated service area, those exchanges for which it was receiving support.

(f) **Requirements for application for ETP designation and commission processing of application.**

- (1) **Requirements for notice and contents of application for ETP designation.**
 - (A) Notice of application. Notice shall be published in the *Texas Register*. The presiding officer may require additional notice. Unless otherwise required by the presiding officer or by law, the notice shall include at a minimum a description of the service area for which the applicant seeks designation, the proposed effective date of the

designation, and the following language: “Persons who wish to comment on this application should notify the Public Utility Commission by (specified date, ten days before the proposed effective date). Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission’s Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136, or use Relay Texas (800) 735-2989 to reach the commission’s toll free number (888) 782-8477.”

- (B) Contents of application. A telecommunications provider seeking to be designated as an ETP for a high cost service area in this state shall file with the commission an application complying with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission staff and one copy shall be delivered to the Office of Public Utility Counsel.
- (i) Telecommunications providers. The application shall:
- (I) show that the applicant is a telecommunications provider as defined in PURA §51.002(10);
 - (II) show that the applicant has been designated by the commission as a telecommunications provider eligible

for federal universal service support and show that the applicant offers federally supported services to customers pursuant to the terms of 47 United States Code §214(e) (relating to Provision of Universal Service) in order to receive federal universal service support;

- (III) specify the THCUSP or small and rural ILEC service area in which the applicant proposes to be an ETP, show that the applicant offers each of the designated services, as defined in §26.403 of this title, throughout the THCUSP or small and rural ILEC service area for which it seeks an ETP designation, and show that the applicant assumes the obligation to offer the services, as defined in §26.403 of this title, to any customer in the THCUSP or small and rural ILEC service area for which it seeks ETP designation;
- (IV) show that the applicant does not offer the designated services, as defined in §26.403 of this title, solely through total service resale;
- (V) show that the applicant renders continuous and adequate service within the area or areas, for which it seeks designation as an ETP, in compliance with the

quality of service standards defined in §§26.52, 26.53, and 26.54 of this title;

- (VI) show that the applicant offers Lifeline and Link Up services in compliance with §26.412 of this title;
 - (VII) show that the applicant advertises the availability of and charges for designated services, as defined in §26.403 of this title, using media of general distribution;
 - (VIII) a statement detailing the method and content of the notice the applicant has provided or intends to provide to the public regarding the application and a brief statement explaining why the notice proposal is reasonable and that the notice proposal complies with applicable law;
 - (IX) provide a copy of the text of the notice;
 - (X) state the proposed effective date of the designation;
and
 - (XI) provide any other information which the applicant wants considered in connection with the commission's review of its application.
- (ii) ILECs. If the applicant is an ILEC, in addition to the requirements of clause (i) of this subparagraph, the application

shall show compliance with the requirements of subsection (c)(2) of this section.

(2) **Commission processing of application.**

(A) Administrative review. An application considered under this section may be reviewed administratively unless the telecommunications provider requests the application be docketed or the presiding officer, for good cause, determines at any point during the review that the application should be docketed.

(i) The effective date of the ETP designation shall be no earlier than 30 days after the filing date of the application or 30 days after notice is completed, whichever is later.

(ii) The application shall be examined for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant shall be notified within ten working days of the filing date of the specific deficiency in its application. The earliest possible effective date of the application shall be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any deadlines shall be determined from the 30th day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date.

- (iii) While the application is being administratively reviewed, the commission staff and the staff of the Office of Public Utility Counsel may submit requests for information to the applicant. Three copies of all answers to such requests for information shall be provided to the commission staff and the Office of Public Utility Counsel within ten days after receipt of the request by the applicant.
 - (iv) No later than 20 days after the filing date of the application or the completion of notice, whichever is later, interested persons may provide written comments or recommendations concerning the application to the commission staff. The commission staff shall and the Office of Public Utility Counsel may file with the presiding officer written comments or recommendations regarding the application.
 - (v) No later than 35 days after the proposed effective date of the application, the presiding officer shall issue an order approving, denying, or docketing the application.
- (B) Approval or denial of application. The application shall be approved by the presiding officer if it meets the following requirements.
- (i) The provision of service constitutes basic local telecommunications service as defined in §26.403 of this title.
 - (ii) Notice was provided as required by this section.

- (iii) The applicant has met the requirements contained in subsection (c) of this section.
 - (iv) The ETP designation is consistent with the public interest in a technologically advanced telecommunications system and consistent with the preservation of universal service.
- (C) Docketing. If, based on the administrative review, the presiding officer determines that one or more of the requirements have not been met, the presiding officer shall docket the application. The requirements of subsection (c) of this section may not be waived.
- (D) Review of the application after docketing. If the application is docketed, the effective date of the application shall be automatically suspended to a date 120 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after the proposed effective date, whichever is later. Three copies of all answers to requests for information shall be filed with the commission within ten days after receipt of the request. Affected persons may move to intervene in the docket, and a hearing on the merits shall be scheduled. A hearing on the merits shall be limited to issues of eligibility. The application shall be processed in accordance with the commission's rules applicable to docketed cases.

(g) **Relinquishment of ETP designation.** A telecommunications provider may seek to relinquish its ETP designation.

(1) **Area served by more than one ETP.** The commission shall permit a telecommunications provider to relinquish its ETP designation in any area served by more than one ETP upon:

(A) written notification not less than 90 days prior to the proposed effective date of the relinquishment;

(B) determination by the commission that the remaining ETP or ETPs can provide basic local service to the relinquishing telecommunications provider's customers; and

(C) determination by the commission that sufficient notice of relinquishment has been provided to permit the purchase or construction of adequate facilities by any remaining ETP or ETPs.

(2) **Area where the relinquishing telecommunications provider is the sole ETP.** In areas where the relinquishing telecommunications provider is the only ETP, the commission may permit it to relinquish its ETP designation upon:

(A) written notification that the telecommunications provider seeks to relinquish its ETP designation; and

(B) commission designation of a new ETP for the service area or areas through the auction procedure provided in subsection (h) of this section.

- (3) **Relinquishment for non-compliance.** The TUSF administrator shall notify the commission when the TUSF administrator is aware that an ETP is not in compliance with the requirements of subsection (c) of this section.
- (A) The commission shall revoke the ETP designation of any telecommunications provider determined not to be in compliance with subsection (c) of this section.
- (B) The commission may revoke a portion of the ETP designation of any telecommunications provider determined not to be in compliance with the quality of service standards defined in §§26.52, 26.53, and 26.54 of this title, in that portion of its ETP service area.
- (h) **Auction procedure for replacing the sole ETP in an area.** In areas where a telecommunications provider is the sole ETP and seeks to relinquish its ETP designation, the commission shall initiate an auction procedure to designate another ETP. The auction procedure will use a competitive, sealed bid, single-round process to select a telecommunications provider meeting the requirements of subsection (f)(1) of this section that will provide basic local telecommunications service at the lowest cost.
- (1) **Announcement of auction.** Within 30 days of receiving a request from the last ETP in a service area to relinquish its designation, the commission shall provide notice in the *Texas Register* of the auction. The announcement shall at minimum detail the geographic location of the service area, the total number of access lines served, the forward-looking economic cost computed

pursuant to §26.403 of this title, of providing basic local telecommunications service and the other services included in the benchmark calculation, existing tariffed rates, bidding deadlines, and bidding procedure.

(2) **Bidding procedure.** Bids must be received by the TUSF administrator not later than 60 days from the date of publication in the *Texas Register*.

(A) Every bid must contain:

- (i) the level of assistance per line that the bidder would need to provide all services supported by universal service mechanisms;
- (ii) information to substantiate that the bidder meets the eligibility requirements in subsection (c)(1) of this section; and
- (iii) information to substantiate that the bidder has the ability to serve the relinquishing ETP's customers.

(B) The TUSF administrator shall collect all bids and within 30 days of the close of the bidding period request that the commission approve the TUSF administrator's selection of the successful bidder.

(C) The commission may designate the lowest qualified bidder as the ETP for the affected service area or areas.

(i) **Requirements for annual affidavit of compliance to receive TUSF support.** An ETP serving a rural or non-rural study area shall comply with the following requirements for annual compliance for the receipt of TUSF support.

- (1) **Annual Affidavit of Compliance.** On or before September 1 of each year, an ETP that receives disbursements from the TUSF shall file with the commission an affidavit certifying that the ETP is in compliance with the requirements for receiving money from the universal service fund and requirements regarding the use of money from each TUSF program from which the telecommunications provider receives disbursements.
- (2) **Filing Affidavit.** The affidavit used shall be the annual compliance affidavit approved by the commission.

§26.418. Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds.

- (a) **Purpose.** This section provides the requirements for the commission to designate common carriers as eligible telecommunications carriers (ETCs) to receive support from the federal universal service fund (FUSF) pursuant to 47 United States Code (U.S.C.) §214(e) (relating to Provision of Universal Service). In addition, this section provides guidelines for rural and non-rural carriers to meet the federal requirements of annual certification for FUSF support criteria and, if requested or ordered, for the disaggregation of rural carriers' FUSF support.
- (b) **Application.** This section applies to a common carrier seeking designation as an ETC, except for commercial mobile radio service (CMRS) resellers. A CMRS reseller may not seek designation from the commission, but instead may seek designation as an ETC by the Federal Communications Commission (FCC). This section also applies to a common carrier that has been designated by the commission as an ETC, including a CMRS reseller. Subsection (i) of this section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Act (PURA) §52.154.
- (c) **Service areas.** The commission may designate ETC service areas according to the following criteria.
- (1) **Non-rural service area.** To be eligible to receive federal universal service support in non-rural areas, a carrier must provide federally supported services

pursuant to 47 Code of Federal Regulations (C.F.R.) §54.101 (relating to Supported Services for Rural, Insular, and High Cost Areas) throughout the area for which the carrier seeks to be designated an ETC.

- (2) **Rural service area.** In the case of areas served by a rural telephone company, as defined in §26.404 of this title (relating to Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan), a carrier must provide federally supported services pursuant to 47 C.F.R. §54.101 throughout the study area of the rural telephone company in order to be eligible to receive federal universal service support.

- (d) **Criteria for determination of ETCs.** A common carrier shall be designated as eligible to receive federal universal service support if it:
 - (1) offers the services that are supported by the federal universal service support mechanisms under 47 C.F.R. §54.101 either using its own facilities or a combination of its own facilities and resale of another carrier's services; and
 - (2) advertises the availability of and charges for such services using media of general distribution.

- (e) **Criteria for determination of receipt of federal universal service support.** In order to receive federal universal service support, a common carrier must:
 - (1) meet the requirements of subsection (d) of this section;

- (2) offer Lifeline Service to qualifying low-income consumers in compliance with 47 C.F.R. Part 54, Subpart E (relating to Universal Service Support for Low-Income Consumers); and
- (3) offer toll limitation services in accordance with 47 C.F.R. §54.400 (relating to Terms and Definitions) and §54.401 (relating to Lifeline Defined).

(f) **Designation of more than one ETC.**

- (1) Non-rural service areas. In areas not served by rural telephone companies, as defined in §26.404 of this title, the commission shall designate, upon application, more than one ETC in a service area so long as each additional carrier meets the requirements of subsections (c)(1) and (d) of this section.
- (2) Rural service areas. In areas served by rural telephone companies, as defined in §26.404 of this title, the commission may designate as an ETC a carrier that meets the requirements of subsections (c)(2) and (d) of this section if the commission finds that the designation is in the public interest.

(g) **Proceedings to designate ETCs.**

- (1) At any time, a common carrier may seek commission approval to be designated an ETC for a requested service area.
- (2) In order to receive support under this section for exchanges purchased from an unaffiliated carrier, the acquiring ETC shall file an application, within 30 days after the date of the purchase, to amend its ETC service area to include those geographic areas that are eligible for support.

- (3) If an ETC receiving support under this section sells an exchange to an unaffiliated carrier, it shall file an application, within 30 days after the date of the sale, to amend its ETC designation to exclude from its designated service area those exchanges for which it was receiving support.
- (h) **Application requirements and commission processing of applications.**
- (1) **Requirements for notice and contents of application.**
- (A) Notice of application. Notice shall be published in the *Texas Register*. The presiding officer may require additional notice. Unless otherwise required by the presiding officer or by law, the notice shall include at a minimum a description of the service area for which the applicant seeks eligibility, the proposed effective date of the designation, and the following statement: “Persons who wish to comment on this application should notify the Public Utility Commission of Texas by (specified date, ten days before the proposed effective date). Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission’s Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136, or use Relay Texas (800) 735-2989 to reach the commission’s toll free number (888) 782-8477.”

(B) Contents of application for each common carrier seeking ETC designation. A common carrier that seeks to be designated as an ETC shall file with the commission an application complying with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission's Regulatory Division and one copy shall be delivered to the Office of Public Utility Counsel. The application shall:

- (i) show that the applicant offers each of the services that are supported by the FUSF support mechanisms under 47 U.S.C. §254(c) (relating to Universal Service) either using its own facilities or a combination of its own facilities and resale of another carrier's services throughout the service area for which it seeks designation as an ETC;
- (ii) show that the applicant assumes the obligation to offer each of the services that are supported by the FUSF support mechanisms under 47 U.S.C. §254(c) to any consumer in the service area for which it seeks designation as an ETC;
- (iii) show that the applicant advertises the availability of, and charges for, such services using media of general distribution;
- (iv) show the service area in which the applicant seeks designation as an ETC;

- (v) contain a statement detailing the method and content of the notice the applicant has provided or intends to provide to the public regarding the application and a brief statement explaining why the proposed notice is reasonable and in compliance with applicable law;
 - (vi) contain a copy of the text of the notice;
 - (vii) contain the proposed effective date of the designation; and
 - (viii) contain any other information which the applicant wants considered in connection with the commission's review of its application.
- (C) Contents of application for each common carrier seeking ETC designation and receipt of federal universal service support. A common carrier that seeks to be designated as an ETC and receive federal universal service support shall file with the commission an application complying with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission staff and one copy shall be delivered to the Office of Public Utility Counsel. The application shall:
- (i) comply with the requirements of subparagraph (B) of this paragraph;

- (ii) show that the applicant offers Lifeline Service to qualifying low-income consumers in compliance with 47 C.F.R. Part 54, Subpart E; and
 - (iii) show that the applicant offers toll limitation services in accordance with 47 C.F.R. §54.400 and §54.401.
- (2) **Commission processing of application.**
 - (A) **Administrative review.** An application considered under this section may be reviewed administratively unless the presiding officer, for good cause, determines at any point during the review that the application should be docketed.
 - (i) The effective date shall be no earlier than 30 days after the filing date of the application or 30 days after notice is completed, whichever is later.
 - (ii) The application shall be examined for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant shall be notified within ten working days of the filing date of the specific deficiency in its application. The earliest possible effective date of the application shall be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any deadlines shall be determined from the 30th day after the filing of the

sufficient application and information or from the effective date if the presiding officer extends that date.

- (iii) While the application is being administratively reviewed, the commission staff and the staff of the Office of Public Utility Counsel may submit requests for information to the telecommunications carrier. Three copies of all answers to such requests for information shall be provided to the commission staff and the Office of Public Utility Counsel within ten days after receipt of the request by the telecommunications carrier.
- (iv) No later than 20 days after the filing date of the application or the completion of notice, whichever is later, interested persons may provide the commission staff with written comments or recommendations concerning the application. The commission staff shall and the Office of Public Utility Counsel may file with the presiding officer written comments or recommendations regarding the application.
- (v) No later than 35 days after the proposed effective date of the application, the presiding officer shall issue an order approving, denying, or docketing the application.

(B) **Approval or denial of application.**

- (i) An application filed pursuant to paragraph (1)(B) of this subsection shall be approved by the presiding officer if the application meets the following requirements:
- (I) the provision of service constitutes the services that are supported by the FUSF support mechanisms under 47 U.S.C. §254(c);
 - (II) the applicant will provide service using either its own facilities or a combination of its own facilities and resale of another carrier's services;
 - (III) the applicant advertises the availability of, and charges for, such services using media of general distribution;
 - (IV) notice was provided as required by this section;
 - (V) the applicant satisfies the requirements contained in subsection (c) of this section; and
 - (VI) if, in areas served by a rural telephone company, the ETC designation is consistent with the public interest.
- (ii) An application filed pursuant to paragraph (1)(C) of this subsection shall be approved by the presiding officer if the application meets the following requirements:
- (I) the applicant has satisfied the requirements set forth in clause (i) of this subparagraph;

- (II) the applicant offers Lifeline Service to qualifying low-income consumers in compliance with 47 C.F.R. Part 54, Subpart E; and
 - (III) the applicant offers toll limitation services in accordance with 47 C.F.R. §54.400 and §54.401.
- (C) **Docketing.** If, based on the administrative review, the presiding officer determines that one or more of the requirements have not been met, the presiding officer shall docket the application.
- (D) **Review of the application after docketing.** If the application is docketed, the effective date of the application shall be automatically suspended to a date 120 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after the proposed effective date, whichever is later. Three copies of all answers to requests for information shall be filed with the commission within ten days after receipt of the request. Affected persons may move to intervene in the docket, and a hearing on the merits shall be scheduled. A hearing on the merits shall be limited to issues of eligibility. The application shall be processed in accordance with the commission's rules applicable to docketed cases.
- (E) **Waiver.** In the event that an otherwise ETC requests additional time to complete the network upgrades needed to provide single-party service, access to enhanced 911 service, or toll limitation, the commission may grant a waiver of these service requirements upon a

finding that exceptional circumstances prevent the carrier from providing single-party service, access to enhanced 911 service, or toll limitation. The period for the waiver shall not extend beyond the time that the commission deems necessary for that carrier to complete network upgrades to provide single-party service, access to enhanced 911 service, or toll limitation services.

- (i) **Designation of ETC for unserved areas.** If no common carrier will provide the services that are supported by federal universal service support mechanisms under 47 U.S.C. §254(c) to an unserved community or any portion thereof that requests such service, the commission, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof and shall order such carrier or carriers to provide such service for that unserved community or portion thereof.

- (j) **Relinquishment of ETC designation.** A common carrier may seek to relinquish its ETC designation.
 - (1) **Area served by more than one ETC.** The commission shall permit a common carrier to relinquish its designation as an ETC in any area served by more than one ETC upon:
 - (A) written notification not less than 90 days prior to the proposed effective date that the common carrier seeks to relinquish its designation as an ETC;

- (B) determination by the commission that the remaining eligible telecommunications carrier or carriers can offer federally supported services to the relinquishing carrier's customers; and
 - (C) determination by the commission that sufficient notice of relinquishment has been provided to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier or carriers.
- (2) **Area where the common carrier is the sole ETC.** In areas where the common carrier is the only ETC, the commission may permit it to relinquish its ETC designation upon:
 - (A) written notification not less than 90 days prior to the proposed effective date that the common carrier seeks to relinquish its designation as an ETC; and
 - (B) commission designation of a new ETC for the service area or areas.
- (k) **Rural and non-rural carriers' requirements for annual certification to receive FUSF support.** A common carrier serving a rural or non-rural study area shall comply with the following requirements for annual certification for the receipt of FUSF support.
 - (1) **Annual certification.** Common carriers must provide the commission with an affidavit annually, on or before September 1st of each year, which certifies that the carrier is complying with the federal requirements for the receipt of FUSF support. Upon receipt and acceptance of the affidavits filed on or

before September 1st each year, the commission will certify these carriers' eligibility for FUSF to the FCC and the Federal Universal Service Fund Administrator by October 1st each year.

- (2) **Failure to file.** Common carriers failing to file an affidavit by September 1st may still be certified by the commission for annual FUSF. However, the carrier is ineligible for support until the quarter following the federal universal service administrator's receipt of the commission's supplemental submission of the carrier's compliance with the federal requirements.
 - (3) **Supplemental certification.** For carriers not subject to the annual certification process, the schedule set forth in 47 C.F.R. §54.313 and 47 C.F.R. §54.314(d) for the filing of supplemental certifications shall apply.
 - (4) **Recommendation for Revocation of FUSF support certification.** The commission may recommend the revocation of the FUSF support certification of any carrier that it determines has not complied with the federal requirements pursuant to 47 U.S.C. §254(e) and will review any challenge to a carrier's FUSF support certification and make an appropriate recommendation as a result of any such review.
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- (1) **Disaggregation of rural carriers' FUSF support.** Common carriers serving rural study areas must comply with the following requirements regarding disaggregation of FUSF support.
 - (1) **Election by May 15, 2002.** On or before May 15, 2002, all rural incumbent local exchange carriers (ILECs) may notify the commission of one of the

following elections regarding FUSF support. This election will remain in place for four years from the effective date of certification, pursuant to 47 C.F.R. §54.315, unless the commission, on its own motion, or upon the motion of the rural ILEC or an interested party, requires a change to the elected disaggregation plan:

- (A) a rural ILEC may choose to certify to the commission that it will not disaggregate at this time;
 - (B) a rural ILEC may seek disaggregation of its FUSF support by filing a targeted plan with the commission that meets the criteria in paragraph (3) of this subsection, subject to the commission's approval of the plan;
 - (C) a rural ILEC may self-certify a disaggregation targeted plan that meets the criteria in paragraphs (3) and (4) of this subsection, disaggregate support to the wire center level or up to no more than two cost zones, or mirror a plan for disaggregation that has received prior commission approval; or
 - (D) if the rural ILEC serves a study area that is served by another carrier designated as an ETC prior to the effective date of 47 C.F.R. §54.315, (June 19, 2001), the ILEC may only self-certify the disaggregation of its FUSF support by adopting a plan for disaggregation that has received prior commission approval.
- (2) **Abstain from filing.** If a rural ILEC abstains from filing an election on or before May 15, 2002, the carrier will not be permitted to disaggregate its

FUSF support unless it is ordered to do so by the commission pursuant to the terms of paragraph (5) of this subsection.

(3) **Requirements for rural ILECs' disaggregation plans.** Pursuant to the federal requirements in 47 C.F.R. §54.315(e) a rural ILEC's disaggregation plan, whether submitted pursuant to paragraph (1)(B), (C) or (D) of this subsection, must meet the following requirements:

- (A) the sum of the disaggregated annual support must be equal to the study area's total annual FUSF support amount without disaggregation;
- (B) the ratio of the per line FUSF support between disaggregation zones for each disaggregated category of FUSF support shall remain fixed over time, except as changes are required pursuant to paragraph (5) of this subsection;
- (C) the ratio of per line FUSF support shall be publicly available;
- (D) the per line FUSF support amount for each disaggregated zone or wire center shall be recalculated whenever the rural ILEC's total annual FUSF support amount changes and revised total per line FUSF support and updated access line counts shall then be applied using the changed FUSF support amount and updated access line counts applicable at that point;
- (E) each support category complies with subparagraphs (A) and (B) of this paragraph;

- (F) monthly payments of FUSF support shall be based upon the annual amount of FUSF support divided by 12 months if the rural ILEC's study area does not contain a competitive carrier designated as an ETC; and
 - (G) a rural ILEC's disaggregation plan methodology and the underlying access line count upon which it is based will apply to any competitive carrier designated as an ETC in the study area.
- (4) **Additional requirements for self-certification of a disaggregation plan.** Pursuant to 47 C.F.R. §54.315(d)(2), a rural ILEC's self-certified disaggregation plan must also include the following items in addition to those items required by paragraph (3) of this subsection:
- (A) support for, and a description of, the rationale used, including methods and data relied upon, as well as a discussion of how the plan meets the requirements in paragraph (3) of this subsection and this paragraph;
 - (B) a reasonable relationship between the cost of providing service for each disaggregation zone within each disaggregation category of support proposed;
 - (C) a clearly specified per-line level of FUSF support for each category pursuant to 47 C.F.R. §54.315(d)(2)(iii);
 - (D) if the plan uses a benchmark, a detailed explanation of the benchmark and how it was determined that is generally consistent with how the level of support for each category of costs was derived so that

competitive ETCs may compare the disaggregated costs for each cost zone proposed; and

(E) maps identifying the boundaries of the disaggregated zones within the study area.

(5) **Disaggregation upon commission order.** The commission on its own motion or upon the motion of an interested party may order a rural ILEC to disaggregate FUSF support under the following criteria:

(A) the commission determines that the public interest of the rural study area is best served by disaggregation of the rural ILEC's FUSF support;

(B) the commission establishes the appropriate disaggregated level of FUSF support for the rural ILEC; or

(C) changes in ownership or changes in state or federal regulation warrant the commission's action.

(6) **Effective dates of disaggregation plans.** The effective date of a rural ILEC's disaggregation plan shall be as specified in 47 C.F.R. §54.315.

§26.420. Administration of Texas Universal Service Fund (TUSF).

- (a) **Purpose.** The provisions of this section establish the administration of the Texas Universal Service Fund (TUSF).
- (b) **Programs included in the TUSF.**
- (1) Section 26.403 of this title (relating to the Texas High Cost Universal Service Plan (THCUSP));
 - (2) Section 26.404 of this title (relating to the Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan);
 - (3) Section 26.406 of this title (relating to the Implementation of the Public Utility Regulatory Act §56.025);
 - (4) Section 26.408 of this title (relating to Additional Financial Assistance (AFA));
 - (5) Section 26.410 of this title (relating to Universal Service Fund Reimbursement for Certain IntraLATA Service);
 - (6) Section 26.412 of this title (relating to Lifeline Service Program);
 - (7) Section 26.414 of this title (relating to Telecommunications Relay Service (TRS));
 - (8) Section 26.415 of this title (relating to Specialized Telecommunications Assistance Program (STAP));
 - (9) Section 26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF));

- (10) Section 26.418 of this title (relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds);
 - (11) Section 26.420 of this title (relating to Administration of Texas Universal Service Fund (TUSF));
 - (12) Section 26.421 of this title (relating to Designation of Eligible Telecommunications Providers to Provide Service to Uncertificated Areas);
 - (13) Section 26.422 of this title (relating to Subsequent petitions for Service to Uncertificated Areas);
 - (14) Section 26.423 of this title (relating to High Cost Universal Service Plan for Uncertificated Areas Where an Eligible Telecommunications Provider Volunteers to Provide Basic Local Telecommunications Service); and
 - (15) Section 26.424 of this title (relating to Audio Newspaper Assistance Program).
- (c) **Responsibilities of the commission.** The commission is the official governing agency for the TUSF, but may delegate the ministerial functions of TUSF administration to another entity (the TUSF administrator) through contractual agreement.
- (1) **Monitoring, and supervising TUSF administration.** The commission reserves the exclusive power to revise rules related to the operation and administration of the TUSF and to monitor and supervise such operation and administration.

- (2) **Annual audit.** The commission annually shall provide for an audit of the TUSF by an independent auditor. The costs of the audit are costs of the commission that are incurred in administering the TUSF, and therefore shall be reimbursed from the TUSF.
- (3) **Inquiry into administration of the TUSF.** The commission may, upon its own motion, upon the petition of the commission staff or the Office of Public Utility Counsel, initiate an inquiry into any aspect of the administration of the TUSF. Any other party may initiate a complaint proceeding pursuant to the commission's procedural rules.
- (4) **Selection of the TUSF administrator.**
 - (A) The commission shall have the sole discretion in the selection of the TUSF administrator. The selection of the TUSF administrator shall be based on a competitive bidding process.
 - (B) The TUSF administrator must meet the technical qualifications as provided in subsection (d)(1) of this section as well as other requirements as determined by the commission.
- (5) **Contract term of the TUSF administrator.** The commission shall determine the duration of the TUSF administrator's contract. Prior to expiration of the contract term, the commission may discharge the TUSF administrator of its duties upon 60-days written notice.
- (6) **Audit STAP voucher payments and expenditures.** The commission shall audit voucher payments and other expenditures made under the STAP program.

(d) **TUSF administrator.** The TUSF administrator serves at the discretion of the commission.

(1) **Technical requirements of the TUSF administrator.** The TUSF administrator shall:

(A) be neutral and impartial, not advocate specific positions to the commission in proceedings not related to the administration of the universal service support mechanisms, and not have a direct financial interest in the universal service support mechanisms established by the commission;

(B) possess demonstrated technical capabilities, competence, and resources to perform the duties of the TUSF administrator as described in this section; and

(C) be bonded or bondable.

(2) **Duties of the TUSF administrator.** The TUSF administrator will administer the TUSF in accordance with the rules set forth in this section and in accordance with the guidelines established by the commission in its contract with the TUSF administrator. The TUSF administrator's general duties shall include, but not be limited to:

(A) managing the daily operations and affairs of the TUSF in an efficient, fair and competitively neutral manner;

- (B) taking steps necessary to ensure that all eligible telecommunications providers (ETPs) are in compliance with the relevant sections of this title under which they are receiving universal service support;
- (C) calculating and collecting the proper assessment amount from every telecommunications provider and verifying that all telecommunications providers are in compliance with the Public Utility Regulatory Act §56.022;
- (D) disbursing the proper support amounts, ensuring that only eligible recipients receive funds, and verifying that all recipients are in compliance with the section or sections of this title under which they are eligible to receive support;
- (E) taking steps necessary, including audits, to ensure that all telecommunications providers that are subject to the TUSF assessment are accurately reporting required information;
- (F) taking steps necessary, including audits, to ensure that all recipients of TUSF funds are accurately reporting required information;
- (G) submitting periodic summary reports to the commission regarding the administration of the TUSF in accordance with specifications established by the commission;
- (H) notifying the commission of any telecommunications providers that are in violation of any of the requirements of this section, §26.417 of this title and any reporting requirements; and
- (I) performing other duties as determined by the commission.

(e) **Determination of the amount needed to fund the TUSF.**

(1) **Amount needed to fund the TUSF.** The amount needed to fund the TUSF shall be composed of the following elements.

(A) Costs of TUSF programs. The TUSF administrator shall compute and include the costs of the following TUSF programs:

- (i) Texas High Cost Universal Service Plan, §26.403 of this title;
- (ii) Small and Rural ILEC Universal Service Plan, §26.404 of this title;
- (iii) Implementation of the Public Utility Regulatory Act §56.025, §26.406 of this title;
- (iv) Additional Financial Assistance, §26.408 of this title;
- (v) Reimbursement for Certain IntraLATA Service, §26.410 of this title;
- (vi) Lifeline Service Program, §26.412 of this title;
- (vii) Telecommunications Relay Service, §26.414 of this title;
- (viii) Specialized Telecommunications Assistance Program (STAP), §26.415 of this title; and
- (ix) Audio Newspaper Assistance Program, §26.424 of this title.

(B) Costs of implementation and administration of the TUSF. The TUSF implementation and administration costs shall include appropriate costs associated with the implementation and administration of the TUSF incurred by the commission (including the costs incurred by

the TUSF administrator on behalf of the commission), and any costs incurred by the Texas Commission for the Deaf and Hard of Hearing caused by its administration of the Specialized Telecommunications Assistance Program (STAP) and the Telecommunications Relay Service programs.

(C) **Reserve for contingencies.** The TUSF administrator shall establish a reserve for such contingencies as late payments and uncollectibles in an amount authorized by the commission.

(2) **Determination of amount needed.** After the initial determination, the TUSF administrator shall determine, on a periodic basis, the amount needed to fund the TUSF. The determined amount shall be approved by the commission.

(f) **Assessments for the TUSF.**

(1) **Providers subject to assessments.** The TUSF assessments shall be payable by all telecommunications providers having access to the customer base; including but not limited to wireline and wireless providers of telecommunications services.

(2) **Definitions.** For the purposes of this section the following definitions apply:

(A) **Actual intrastate telecommunications services receipts -**

Telecommunications services receipts that are clearly identifiable as intrastate telecommunications services receipts, as defined in subparagraph (E) of this paragraph.

- (B) FCC - means the Federal Communications Commission.
- (C) Interstate communications - Has the meaning assigned by 47 U.S.C. §153(22).
- (D) International communications -- Has the meaning assigned by 47 U.S.C. §153(17) (foreign communications).
- (E) Intrastate telecommunications services receipts -- Taxable telecommunications services receipts as reported by the telecommunications provider under Chapter 151 of the Texas Tax Code, with the exception of:
 - (i) Pay telephone service revenues received by providers of pay telephone services, which are exempt from the TUSF assessment pursuant to PURA §56.022(c)(2);
 - (ii) Telecommunications services receipts from interstate communications and international communications included in telecommunications services receipts reported under Chapter 151 of the Texas Tax Code; and
 - (iii) TUSF surcharges collected from customers.
- (F) Receipts -- Has the meaning assigned by Texas Tax Code §151.007.
- (G) Safe-Harbor intrastate telecommunications services receipts -- Means intrastate telecommunications receipts calculated by applying a commission-ordered percentage to telecommunications services receipts that are not clearly identifiable as intrastate.

- (H) Telecommunications provider -- Has the meaning assigned by PURA §51.002(10).
- (I) Telecommunications services -- Has the meaning assigned by Texas Tax Code §151.0103.
- (3) **Basis for assessments.** Assessments will be based upon the following:
 - (A) **Actuals.** Effective January 1, 2007, assessments shall be made to each telecommunications provider based upon its monthly taxable actual intrastate telecommunications services receipts reported by that telecommunications provider under Chapter 151 of the Texas Tax Code.
 - (B) **Commission-Ordered Safe Harbor.** A telecommunications provider that is unable to calculate actual intrastate telecommunications services receipts by January 1, 2007, and does not meet the *de minimus* exemption in subsection (c) of this section, may request, and the commission may grant for good cause, the modification or waiver of the requirement set forth in subsection (a) of this section, to allow the telecommunications provider to calculate all or some of its intrastate taxable telecommunications receipts using the relevant commission-ordered safe-harbor percentage. Requests for waiver will be subject to administrative review unless the presiding officer determines at any point during the review that the request should be docketed. The presiding officer will issue an order

approving, denying or docketing the request for waiver within 180 calendar days of the filing date of the waiver request.

- (i) A request for waiver must contain, at a minimum:
 - (I) an affidavit from a corporate officer of the telecommunications provider attesting to the fact that the telecommunications provider is unable to calculate all or some of its actual intrastate telecommunications services receipts and, if applicable, that the telecommunications provider is using a safe harbor authorized by the FCC;
 - (II) a date by which the telecommunications provider will be able to calculate actual intrastate telecommunications services receipts;
 - (III) an explanation detailing why the telecommunications provider is unable to calculate actual intrastate telecommunications services receipts and why a waiver is necessary;
 - (IV) a detailed description of the safe-harbor percentage that is requested and how it will be applied;
 - (V) if applicable, a compliance tariff filing pursuant to paragraph (6)(C) of this subsection; and
 - (IV) any other information that the telecommunications provider believes will aid in rendering of a decision.

- (ii) If a telecommunications provider requests a permanent waiver from reporting its TUSF assessment based on actual intrastate telecommunications services receipts, then the telecommunications provider must file a waiver containing all elements in clause (i) of this subparagraph, as well as an explanation detailing why a permanent waiver is required, and why it is in the public interest.
- (iii) A telecommunications provider that has been granted a waiver shall apply, for the duration of that waiver, a safe-harbor percentage to its telecommunications services receipts using one of the methods described in subclauses (I) or (II) of this clause as follows:
 - (I) If a telecommunications provider is reporting interstate communications and international communications revenues for assessment for the federal universal service fund based on an FCC safe-harbor percentage, then the telecommunications provider shall apply the inverse of that percentage to its telecommunications services receipts as reported under Chapter 151 of the Texas Tax Code. The resulting total will be the telecommunications provider's safe-harbor-calculated total intrastate telecommunications services receipts to

which the TUSF assessment rate shall apply pursuant to paragraph (4) of this subsection.

- (II) If a telecommunications provider is not using an FCC safe-harbor percentage, the telecommunications provider shall apply a commission-ordered safe harbor percentage to its telecommunications services receipts under Chapter 151 of the Texas Tax Code as described in its waiver request approved by the commission. The resulting total will be the telecommunications provider's safe-harbor-calculated intrastate telecommunications services receipts to which the TUSF assessment rate shall apply pursuant to paragraph (4) of this subsection.
- (iv) If a telecommunications provider that has been granted a waiver seeks to change its safe-harbor assessment methodology, or seeks an extension of its existing waiver, it must file another waiver request with the commission.
- (v) A telecommunications provider may, at any time during the duration of its waiver and upon notice to the commission and the TUSF administrator, change its methodology to assess actual intrastate telecommunications services receipts. This will terminate any existing waiver.

- (C) ***De minimus exemption.*** A telecommunications provider that is unable to calculate actual intrastate telecommunications services receipts by January 1, 2007, and whose TUSF assessment is less than \$500 per month using the relevant commission-ordered safe-harbor percentage, is not required to file a waiver request pursuant to subparagraph (B) of this paragraph.
- (D) Intrastate telecommunications services receipts received by telecommunications providers from telecommunications services supplied to pay telephone providers for the provision of pay telephone services are subject to TUSF assessment.
- (4) **Assessment.** Each telecommunications provider shall pay its TUSF assessment each month by multiplying the commission-approved assessment rate by the basis for assessments as determined pursuant to paragraph (3) of this subsection.
- (5) **Reporting requirements.** Each telecommunications provider shall report its taxable intrastate telecommunications services receipts under Chapter 151 of the Tax Code to the commission or the TUSF administrator. When reporting its intrastate telecommunications services receipts, each telecommunications provider shall report its total taxable telecommunications services receipts under Chapter 151 of the Tax Code, and indicate which methodology or methodologies (*i.e.*, actual and/or commission-ordered safe-harbor percentage) it used to arrive at its total intrastate telecommunications services receipts.

- (6) **Recovery of assessments.** A telecommunications provider may recover the amount of its TUSF assessment based on its intrastate telecommunications services receipts from its retail customers who are subject to tax under Chapter 151 of the Texas Tax Code, except for Lifeline and/or Link Up services. For purposes of the recovery of the TUSF assessment, pay telephone providers are considered retail customers subject to Chapter 151 of the Texas Tax Code. The commission may order modifications in a telecommunications provider's method of recovery.
- (A) Retail customers' bills. In the event a telecommunications provider chooses to recover its TUSF assessment through a surcharge added to its retail customers' bills:
- (i) the surcharge must be listed on the retail customers' bills as "Texas Universal Service"; and
 - (ii) the surcharge must be assessed as a percentage of intrastate telecommunications services receipts on every retail customers' bill, except Lifeline and/or Link Up services.
- (B) Commission approval of surcharge mechanism. An ILEC choosing to recover the TUSF assessment through a surcharge on its retail customers' bills must file for commission approval of the surcharge mechanism.
- (C) Tariff and/or price sheet changes. A certificated telecommunications utility choosing to recover the TUSF assessment through a surcharge on its retail customers' bills shall file the appropriate changes as

necessary to its tariff and/or price sheet and provide supporting documentation for the method of recovery.

(D) Recovery period. A single universal service fund surcharge shall not recover more than one month of assessments.

(7) **Disputing assessments.** Any telecommunications provider may dispute the amount of its TUSF assessment. The telecommunications provider should endeavor to first resolve the dispute with the TUSF administrator. If the telecommunications provider and the TUSF administrator are unable to satisfactorily resolve their dispute, either party may petition the commission to resolve the dispute. Pending final resolution of disputed TUSF assessment rates and/or amounts, the disputing telecommunications provider shall remit all undisputed amounts to the TUSF administrator by the due date.

(g) **Disbursements from the TUSF to ETPs, ILECs, other entities and agencies.**

(1) **ETPs, ILECs, other entities, and agencies.**

(A) ETPs. The commission shall determine whether an ETP qualifies to receive funds from the TUSF. An ETP qualifying for the following programs is eligible to receive funds from the TUSF:

- (i) Texas High Cost Universal Service Plan;
- (ii) Small and Rural ILEC Universal Service Plan; and/or
- (iii) Lifeline Service and Link Up Service.

(B) ILECs. The commission shall determine whether an ILEC qualifies to receive support from the following TUSF programs:

- (i) Implementation of the Public Utility Regulatory Act §56.025; and/or
 - (ii) Additional Financial Assistance program.
 - (C) Other entities. The commission shall determine whether other entities qualify to receive funds from the TUSF. Entities qualifying for the following programs are eligible to receive funds from the TUSF:
 - (i) Telecommunications Relay Service;
 - (ii) Specialized Telecommunications Assistance Program; and/or
 - (iii) Audio Newspaper Assistance Program.
 - (D) Agencies. The commission, the Texas Department of Aging and Disability Services, the Texas Department of Assistive and Rehabilitative Services, and the TUSF administrator are eligible for reimbursement of the costs directly and reasonably associated with the implementation of the provisions of PURA Chapters 56 and 57.
- (2) **Reporting requirements.**
- (A) ETPs. An ETP shall report to the TUSF administrator as required by the provisions of the section or sections under which it qualifies to receive funds from the TUSF.
 - (B) Other entities. A qualifying entity shall report to the TUSF administrator as required by the provisions of the section or sections under which it qualifies to receive funds from the TUSF.
 - (C) Agencies. A qualifying agency shall report its qualifying expenses to the TUSF administrator each month.

(3) **Disbursements.**

- (A) The TUSF administrator shall verify that the appropriate information has been provided by each ETP, local exchange company (LEC), other entities or agencies and shall issue disbursements to ETPs, LECs, other entities and agencies within 45 days of the due date of their reports except as otherwise provided.
- (B) Prior to August 31, 2007, if an electing LEC, as defined in §26.5 of this title (relating to Definitions), reduces rates in conjunction with receiving disbursements from the TUSF, the commission may not reduce the amount of those disbursements below the initial level of disbursements upon implementation of the TUSF, except that:
- (i) if a local end user customer of the electing company switches to another local service provider that serves the customer entirely through the use of its own facilities and not partially or solely through the use of unbundled network elements, the electing LEC's disbursement may be reduced by the amount attributable to that customer under PURA §56.021(1); or
 - (ii) if a local end user customer of the electing company switches to another local service provider, and the new local service provider serves the customer partially or solely through the use of unbundled network elements provided by the electing LEC, the electing LEC's disbursement attributable to that customer under PURA §56.021(1) may be reduced according

to the commission established equitable allocation formula for the disbursement as described in §26.403(e)(3)(C) of this title (relating to Texas High Cost Universal Service Plan (THCUSP)).

- (C) The commission may adjust disbursements from the universal service fund to companies using technologies other than traditional wireline or landline technologies to meet provider of last resort obligations.
- (h) **True-up.** The assessment amount determined pursuant to subsections (e) and (f) of this section shall be subject to true-up as determined by the TUSF administrator and approved by the commission. True-ups shall be limited to a three year period for under-reporting and a one year period for over-reporting.
- (i) **Sale or transfer of exchanges.**
- (1) An ETP that acquires exchanges from an unaffiliated small or rural ILEC receiving support for those exchanges pursuant to §26.404 of this title, shall receive the per-line support amount for which those exchanges were eligible prior to the sale or transfer.
 - (2) An ETP that acquires exchanges from an unaffiliated ETP receiving support for those exchanges pursuant to §26.403 of this title, shall receive the per-line support amount for which those exchanges were eligible prior to the transfer of the exchanges.

- (j) **Proprietary information.** The commission and the TUSF administrator are subject to the Texas Open Records Act, Texas Government Code, Chapter 552. Information received by the TUSF administrator from the individual telecommunications providers shall be treated as proprietary only under the following circumstances:
- (1) An individual telecommunications provider who submits information to the TUSF administrator shall be responsible for designating it as proprietary at the time of submission. Information considered to be confidential by law, either constitutional, statutory, or by judicial decision, may be properly designated as proprietary.
 - (2) An individual telecommunications provider who submits information designated as proprietary shall stamp on the face of such information “PROPRIETARY PURSUANT TO PUC SUBST. R. §26.420(j)”.
 - (3) The TUSF administrator may disclose all information from an individual telecommunications provider to the telecommunications provider who submitted it or to the commission and its designated representatives without notifying the telecommunications provider.
 - (4) All third party requests for information shall be directed through the commission. If the commission or the TUSF administrator receives a third party request for information that a telecommunications provider has designated proprietary, the commission shall notify the telecommunications provider. If the telecommunications provider does not voluntarily waive the proprietary designation, the commission shall submit the request and the responsive information to the Office of the Attorney General for an opinion

regarding disclosure pursuant to the Texas Open Records Act, Texas Government Code, Chapter 552, Subchapter G.

§26.421. Designation of Eligible Telecommunications Providers to Provide Service to Uncertificated Areas.

- (a) **Purpose.** The provisions of this section establish the procedures for the commission to designate an eligible telecommunications provider (ETP) to provide voice-grade services to permanent residential or business premises that are not included within the certificated area of a holder of a certificate of convenience and necessity (CCN), and for the reimbursement of costs from the Texas Universal Service Fund (TUSF).
- (b) **Definitions.** The following words and terms, when used in this section, shall have the following meaning unless the context clearly indicates otherwise:
- (1) **Designated provider** -- A telecommunications provider designated by the commission to provide services to premises located within an uncertificated area
 - (2) **Eligible telecommunications provider (ETP)** -- A telecommunications provider designated by the commission pursuant to §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).
 - (3) **Permanent residential or business premises** -- A premises that has permanent facilities for water, wastewater, and electricity.
 - (4) **Preferred provider** -- A designated provider for any permanent residential or business premises within reasonable proximity to those petitioning premises for later petitions filed under §26.422 of this title (relating to Subsequent Petitions for Service in Uncertificated Areas).

- (c) **Application.** This section applies to telecommunications providers that have been designated ETPs by the commission pursuant to §26.417 of this title. This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Act (PURA) §52.154.
- (d) **Petition for service.**
- (1) **Eligibility.** Persons residing in permanent residential premises or owners of permanent residential or business premises that are not included within the certificated area of a holder of a CCN may petition the commission to designate an ETP to provide to those premises voice-grade services supported by state and federal universal service support mechanisms.
- (2) **Contents of petition.** A petition for designation of an ETP must:
- (A) State with reasonable particularity the locations of the permanent residential or business premises for which the petitioner(s) are requesting service;
- (B) Establish that the premises are within reasonable proximity to one another so that the petitioners possess a sufficient community of interest;
- (C) Nominate as potential providers of service, not more than five telecommunications providers serving territory that is contiguous to the location of the permanent residential or business premises using wireless or wireline facilities, resale, or unbundled network elements;
- and

- (D) Include as an attachment or an appendix, documentation indicating the required residence or ownership, such as a state-issued license or identification, tax records, deeds, or voter registration materials.
- (3) **Eligibility of petitioner(s).** Except as provided by paragraph (4) of this subsection, the petition must be signed by at least five persons who:
- (A) Are not members of the same household;
 - (B) Reside in the permanent residential premises or are the owners of the permanent residential or business premises for which service is sought;
 - (C) Desire service to those premises;
 - (D) Commit to pay the aid to construction charges for service to those premises as determined by the commission; and
 - (E) Commit to enter into an assignable agreement for subscription to basic local service to the premises for a period of time determined by the commission.
- (4) **Number of petitioners.** The commission may accept a petition that is signed by fewer than five persons if the petitioner(s) provides an affidavit stating that the petitioner(s) has taken all reasonable steps to secure the signatures of the residents of permanent residential premises or the owners of permanent residential or business premises within reasonably close proximity to the petitioner's premises who are not receiving telephone service when the petition is filed and who want telephone service initiated.

- (5) **Form.** The petitioner(s) shall file the petition using the commission-approved forms.

(e) **Completeness of petition.**

- (1) **Commission action.** Upon receipt of a petition, the commission shall review the petition for completeness. Within 15 working days from the date of receipt of the petition, the commission shall determine if the petition is complete and has been filed consistent with subsection (d) of this section.
- (2) **Petition complete.** If the commission determines the petition is complete, the commission will send a notice of completeness to the petitioner(s), to all telecommunications providers identified in the petition, and if not otherwise notified, to the incumbent local exchange carriers serving the contiguous exchanges. In the notice, the commission shall seek volunteers to provide telecommunications services in the permanent residential or business premises. The commission shall also include with the notice a copy of the petition. The commission shall publish notice of the petition and the notice of completeness in the Texas Register.
- (3) **Petition denied.** If a petition is denied, the commission shall send a notice of denial explaining the reason(s) for denial to the petitioner(s).

(f) **Responding to notice of completeness.**

- (1) **Response.** Telecommunication providers shall respond to the commission's notice of completeness and request for volunteers within 30 days after receipt of the notice. A provider may respond by:
 - (A) Stating that it is not eligible to be designated to serve the premises under this section;
 - (B) Volunteering to provide service to the premises; or
 - (C) Refusing to volunteer to provide service to the premises.
- (2) **Volunteering to serve.** A provider volunteering to provide service to the premises shall respond to the commission by providing a proposal that includes:
 - (A) An affidavit duly signed by an officer of the company;
 - (B) A description of the technology proposed for deployment;
 - (C) An estimate of the costs for deployment and the recurring monthly costs of service; and
 - (D) An estimated timeline for deployment of facilities and a date by which service will be extended to the premises.
- (3) **Commission action.** Upon receipt of a volunteering provider's proposal, the commission may:
 - (A) Approve a proposal administratively and permit the ETP to serve the uncertificated area and recover its costs pursuant to subsection (j) of this section; or

(B) Reject a proposal and proceed to a hearing pursuant to subsection (g) of this section.

(g) **Evidentiary hearing.** If the petition cannot be processed administratively, the commission shall conduct an evidentiary hearing to determine:

- (1) If an ETP is willing to be designated to provide service to the petitioner(s); or
- (2) The ETP that is best able to serve the petitioner(s).

(h) **Commission decision.** The commission should consider all relevant factors, including, but not limited to:

- (1) The original cost to be incurred by a designated provider to deploy service to the petitioning premises, and the effect of reimbursement of those costs on the state universal service fund;
- (2) The number of access lines requested by the petitioners for the petitioning premises;
- (3) The size of the geographic territory in which the petitioning premises are included;
- (4) The proximity of existing facilities and the existence of a preferred designated provider under the Public Utility Regulatory Act (PURA) §56.213; and
- (5) Any technical barriers to the provision of service.

- (i) **Commission order.** The commission shall issue an order granting or denying a petition within 180 days of the filing of the petition. In any order granting a petition the commission shall include the following:
- (1) Description of the facilities to be deployed;
 - (2) Estimated costs of deployment;
 - (3) Aid to construction fee to be paid by the petitioner(s), not to exceed \$3,000;
 - (4) Monthly recurring charge to be paid by the petitioner(s);
 - (5) Estimated cost to be recovered from the TUSF;
 - (6) Recurring, monthly per line fee to be recovered from the TUSF;
 - (7) Date by which services must be extended to the premises; and
 - (8) Schedule of cost recovery for the provider's original cost of deployment consistent with the following:
 - (A) Not later than the third anniversary of the date of the order, for a deployment with an estimated original cost of \$1 million or less;
 - (B) Not later than the fifth anniversary of the date of the order, for a deployment with an estimated original cost of more than \$1 million, but not more than \$2 million; and
 - (C) Not later than the seventh anniversary of the date of the order, for a deployment with an estimated original cost of more than \$2 million.
- (j) **Cost recovery.** A designated provider may recover from the TUSF the provider's actual costs of providing service to the premises, including the provider's original cost of deployment not recovered from the petitioner(s) through an aid to

construction charge and the provider's actual recurring costs not recovered from the petitioner(s) through a monthly recurring charge.

- (1) The original cost of deployment includes the cost of the provider's facilities installed in, or upgraded to permit the provision of service to, the premises, as determined by the financial accounting standards applicable to the provider, including an amount for the recovery of all costs that are typically included as capital costs for accounting purposes.
 - (2) The provider is permitted to recover interest at the prevailing commercial lending rate on its original costs of deployment.
 - (3) Actual recurring costs include maintenance and the ongoing operational costs of providing service after deployment of the facilities to the premises and a reasonable operating margin.
- (k) **Submission of actual costs.** Upon completion of the construction, the designated provider shall file the actual costs with the commission.
- (1) No later than 30 days after filing the actual costs, commission staff shall file with the presiding officer written comments or recommendations concerning the actual costs.
 - (2) No later than 60 days after filing the actual costs, the presiding officer shall issue a notice stating whether the costs may be submitted to the TUSF administrator for recovery consistent with the order issued pursuant to subsection (i) of this section.

- (3) The designated provider or the commission staff may appeal to the commission an administrative notice issued by a presiding officer within seven days after the date the notice is issued. The commission shall rule on any appeal added to an open meeting agenda, within 30 days after the date the appeal is filed. If the commission or a presiding officer orders changes to the actual costs submitted, the designated provider shall be ordered to make those changes within a reasonable period of time before they may be submitted to the TUSF administrator for recovery.
- (1) **Cap on TUSF reimbursements.** The commission may not authorize or require any services to be provided under this section during a fiscal year if the total amount of required reimbursements, together with interest and obligations from preceding years, would equal an amount that exceeds 0.02% of the annual gross revenues reported to the TUSF during the preceding fiscal year.

§26.422. Subsequent Petitions for Service in Uncertificated Areas.

- (a) This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Act (PURA) §52.154.
- (b) If the commission approves a petition requesting service, residents of permanent residential premises or owners of permanent residential or business premises in reasonable proximity to the premises that were the subject of an approved petition who did not sign the prior petition requesting service are not entitled to receive service under the Public Utility Regulatory Act (PURA), Chapter 56, Subchapter F, prior to the fifth anniversary of the date the prior petition was filed, unless the residents or owners file a new petition and agree to pay aid to construction charges on the same terms as applicable to the prior petitioner(s).
- (c) The designated provider shall receive reimbursement for the original cost of deployment and actual recurring costs of providing service to those additional residents in the same manner as the provider received reimbursement of those costs in relation to the prior petitioner(s). The provider may not receive reimbursement for the original cost of deployment under a subsequent petition if the provider previously received complete reimbursement for those costs from the Texas Universal Service Fund (TUSF). If the TUSF has completely reimbursed the original cost of deployment as provided by §26.421 of this title (relating to Designation of Eligible Telecommunications Providers to Provide Service to Uncertificated Areas), each

subsequent petitioner must pay into the TUSF an amount equal to the aid to construction charge paid by each prior petitioner.

§26.423. High Cost Universal Service Plan for Uncertificated Areas where an Eligible Telecommunications Provider (ETP) Volunteers to Provide Basic Local Telecommunications Service.

- (a) **Purpose.** This section establishes the guidelines for financial assistance to ETPs that serve uncertificated areas of the state where an ETP volunteers to provide basic voice-grade telecommunications service to permanent residential and single-line business premises.
- (b) **Definitions.** The following words and terms, when used in this section, shall have the following meaning unless the context clearly indicates otherwise:
- (1) **Eligible line** -- A residential line and a single-line business line as defined by §26.403 of this title (relating to Texas High Cost Universal Service Plan (THCUSP)).
 - (2) **Eligible telecommunications provider (ETP)** -- A telecommunications provider designated by the commission pursuant to §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).
 - (3) **Permanent residential or business premises** -- A premise as defined pursuant to §26.421 of this title (relating to Designation of Eligible Telecommunications Providers to Provide Service to Uncertificated Areas).
 - (4) **Uncertificated areas** -- An area of the state that is not included within the certificated area of a holder of a certificate of convenience and necessity (CCN).

- (c) **Application.** This section applies to telecommunications providers that have been designated ETPs by the commission pursuant to §26.417 of this title. This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Act (PURA) §52.154.
- (d) **Service to be supported by the High Cost Universal Service Plan for uncertificated areas where an ETP volunteers to provide basic local telecommunications service.** The High Cost Universal Service Plan for uncertificated areas shall support the provision by ETPs of basic local telecommunications services as defined in §26.403(d) of this title.
- (e) **Support for uncertificated areas where an ETP volunteers to provide service.** The TUSF administrator shall disburse monthly support payments to ETPs qualified to receive support pursuant to this section. The amount of support available to each ETP shall be calculated using the base support amount available as provided under paragraph (1) of this subsection as adjusted by the requirements of paragraph (3)(B) of this subsection.
- (1) **Determining base support amount available to ETPs.**
- (A) The monthly per-line support available for uncertificated areas shall be determined by calculating the average of the per-line support amount approved for all local telephone company exchanges of CCN holder's that are contiguous to the uncertificated area for which reimbursement is requested. The per line support amounts used for

this calculation shall include, as appropriate, support amounts approved for only those exchanges directly contiguous to the uncertificated area for which support is being requested. The resulting average support shall apply to a line at a premises in the uncertificated area regardless of the residential or business status of the line.

(B) Support under this section is portable with the consumer.

(2) **Proceedings to determine support amount.**

(A) Initial determination for uncertificated areas.

(i) Upon petition by an ETP, the commission shall establish a monthly per-line support amount for an uncertificated area as identified by the ETP where it has been determined that prospective telecommunications subscribers exist. The establishment of support for more than one uncertificated area may be requested within a single petition.

(ii) The review of the petition shall be accomplished in an administrative or docketed proceeding initiated by the ETP requesting support for the provision of single-line residential or business service within an uncertificated area or areas.

(iii) The commission, on its own motion, may initiate a proceeding to establish monthly per-line support amounts for uncertificated areas.

- (B) Subsequent determination of support amount.
- (i) The commission shall subsequently review the support for uncertificated areas consistent with the review provided for under §26.403 and §26.404 of this title (relating to Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan).
- (ii) The commission may initiate review of the support for uncertificated areas and base support amounts under this section on its own motion at any time.
- (3) **Calculating amount of support payments to individual ETPs.** After the monthly per-line amount is determined, the TUSF administrator shall make the following adjustments each month in order to determine the actual support payment that each ETP may receive each month.
- (A) **Payments.** The payment to each ETP shall be computed by multiplying the per-line amount established by paragraph (1) of this subsection for a given uncertificated area by the number of eligible lines served by the ETP in such uncertificated area for the month.
- (B) **Adjustment for federal USF support.** The base support amount an ETP is eligible to receive shall be decreased by the amount of federal universal service high cost support received by the ETP.

(f) **Reporting requirements.**

- (1) An ETP eligible to receive support under this section shall provide the TUSF administrator with the following information:
 - (A) A report of the total number of eligible lines served by the ETP in a designated uncertificated area to the TUSF Administrator on a monthly basis;
 - (B) The telecommunications provider's residential and single-line business rates on file with the commission, as of the provisioning date for service;
 - (C) The average per-line assistance for each local exchange telephone company exchange contiguous to the area in question; and
 - (D) A calculation of the base support in accordance with the requirements of this subsection and subsection (e) of this section.
- (2) Upon request by the commission, the telecommunications provider awarded support under this section shall explain the basis on which it is establishing rates under this section.
- (3) An ETP shall report any other information required by the commission and the TUSF Administrator, including any information necessary to assess contributions to and disbursements from the TUSF.

- (g) **Initial support provided pursuant to this section.** Initial payment of support under this section shall be retroactive to the latter of the date on which a telecommunications provider either:

- (1) Petitions the commission for THCUSP assistance; or
- (2) Begins providing basic local telephone service to the residential or business location approved for support.

§26.431. Monitoring of Certain 9-1-1 Fees.

(Repealed)

This agency hereby certifies that the adoption 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 §§26.5, 26.22, 26.23, 26.25, 26.27, 26.28, 26.30, 26.31, 26.34, 26.51, 26.79, 26.80, 26.85, 26.89, 26.123, 26.128, 26.133, 26.142, 26.143, 26.211, 26.272, 26.311, 26.313, 26.317, 26.319, 26.321, 26.342, 26.417, 26.418, 26.421, 26.422, 26.423 are hereby adopted with changes to the text as proposed and §§26.52, 26.53, 26.73, 26.225, 26.226, 26.227, 26.228, 26.229, 26.230, 26.406, 26.420, and the repeal of 26.431 are hereby adopted without changes to the text as proposed.

SIGNED AT AUSTIN, TEXAS the _____ day of _____ 2014.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY D. MARTY, COMMISSIONER