

PROJECT NO. 31958

RULEMAKING PROJECT FOR § PUBLIC UTILITY COMMISSION
ESTABLISHING TELECOM SERVICE §
QUALITY STANDARDS FOR § OF TEXAS
ALTERNATIVE TECHNOLOGIES USED §
BY A PROVIDER OF LAST RESORT §

PROPOSAL FOR PUBLICATION OF NEW §26.57
AS APPROVED AT THE FEBRUARY 10, 2009 OPEN MEETING

The Public Utility Commission of Texas (commission) proposes new §26.57 relating to the requirements for a certificate holder's use of an alternate technology to meet its provider of last resort (POLR) obligations. The rule will establish minimum service quality standards for a certificate holder that uses alternate technology to meet its POLR obligations in providing basic local telecommunications services. Project Number 31958 is assigned to this proceeding.

Nara Srinivasa, Director of the Reliability and Licensing Section in the Infrastructure and Reliability Division, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Srinivasa, has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be the implementation of Public Utility Regulatory §54.251(c), which requires the commission to establish requirements for a certificate holder's use of an alternate technology to meet its POLR obligations. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. Therefore, no regulatory flexibility analysis is required. There will be no economic costs to persons who are required to comply with the rule, because the rule will give certificate holders

the option to use alternate technologies to provide POLR service when those technologies are more appropriate than traditional circuit-switched wireline or landline technologies.

Mr. Srinivasa has also determined that for each year of the first five years the rule is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

Initial comments on the rule may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Sixteen copies of comments on the rule are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the rule. The commission will consider the costs and benefits in deciding whether to adopt the rule. All comments should refer to Project Number 31958.

This rule is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2008) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §54.251(c) which requires the commission to establish requirements for a certificate holder's use of an alternate technology to meet its POLR obligations.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §54.251(c).

§26.57. Requirements for a Certificate Holder's Use of an Alternate Technology to meet its Provider of Last Resort Obligation.

- (a) **Purpose.** This section establishes the requirements that apply when the holder of a certificate holder uses an alternate technology to meet its provider of last resort (POLR) obligations.
- (b) **Definitions.** The following terms used in this section shall have the following meanings, unless the context indicates otherwise.
- (1) **Alternate technology** -- a technology other than traditional circuit-switched wireline or landline technologies.
- (2) **Certificate holder** -- a holder of a certificate of convenience and necessity or a certificate of operating authority.
- (c) **Application of this section.** A certificate holder may use an alternate technology to meet its POLR obligations only after the commission approves the use of that alternate technology. A certificate holder must be granted approval for each type of alternate technology used to meet its POLR obligations. Unless determined otherwise by the commission, upon receiving approval to use an alternate technology to meet its POLR obligations, a certificate holder may use that technology anywhere in its service territory to meet its POLR obligations.
- (d) **Standards for meeting POLR obligations using an alternate technology.** In using an alternate technology to meet its POLR obligations, a certificate holder shall comply with the following standards.
- (1) **Quality of service.** Unless determined otherwise by the commission, the

certificate holder shall meet applicable minimum quality of service standards comparable to the following requirements.

- (A) §26.52 of this title (relating to Emergency Operations);
- (B) §26.53 of this title (relating to Inspections and Tests); and
- (C) §26.54 of this title (relating to Service Objectives and Performance Benchmarks).

(2) **911 Service.** The certificate holder shall meet the following 911 service requirements.

- (A) A certificate holder shall provide 911 services in accordance with requirements comparable to those set forth in Chapters 771 and 772 of the Texas Health and Safety Code and federal law, as applicable; and
- (B) A certificate holder providing 911 service to a fixed location shall include validated address location as part of the Automatic Location Identification.

(3) **Price.** The service provided by the certificate holder to meet its POLR obligations in an exchange shall be offered at a price comparable to the monthly service charge for comparable services in that exchange or in the certificate holder's nearest exchange.

(e) **Application to meet its POLR obligations using an alternate technology.** A certificate holder shall file a detailed application demonstrating that the certificate holder meets the standards set forth in subsection (d) of this section.

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

(1) **Notice.**

- (A) The commission shall provide notice in the *Texas Register*.
 - (B) The applicant shall provide additional notice as required by the commission.
- (2) **Sufficiency of application.** A motion to find an application materially deficient shall be filed no later than 15 working days after an application is filed. The motion shall be served on the applicant such that the applicant receives it by the day after it is filed. The motion shall specify the nature of the deficiency and the relevant portions of the application, and cite the particular requirement with which the application is alleged not to comply. The applicant's response to a motion to find an application materially deficient shall be filed no later than five working days after such motion is received. If within 26 working days after the filing of the application, the presiding officer has not filed a written order concluding that material deficiencies exist in the application, the application is deemed sufficient. The presiding officer shall notify the parties of any material deficiencies by written order and the applicant must cure the deficiencies within 30 days of receipt of the order.
- (3) **Review of application.** If the requirements of §22.35 of this title (relating to Informal Disposition) are met, the presiding officer shall issue a notice of approval or proposed order within 60 days of the date a materially sufficient application is filed unless good cause exists to extend this deadline. If the requirements of §22.35 of this title are not met, the presiding officer shall establish a procedural schedule that provides for the resolution of the issues in the proceeding.

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

**ISSUED IN AUSTIN, TEXAS ON THE 11th DAY OF FEBRUARY 2009 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**

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