

PROJECT NO. 24640

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PUBLIC UTILITY COMMISSION
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ISSUES RELATED TO §
ESTABLISHMENT OF, AND ANNUAL §
REVISIONS TO, ACCESS LINE §
RATES FOR TEXAS §
MUNICIPALITIES §

PUBLIC UTILITY COMMISSION
OF TEXAS

ORDER ESTABLISHING ACCESS LINE RATES FOR THE CITY OF MUNDAY

This Order establishes the fee per access line rates for the City of Munday (City), and is necessary because the City did not initially participate in the process of establishing fee per access line rates under TEX. LOC. GOV'T CODE Ch. 283, but now elects to set such rates. Accordingly, fee per access line rates for the City are shown in Exhibit A, attached hereto. These rates shall be applied prospectively from the date of this Order. Finally, this Order does not authorize surcharges for recovery of any compensation for right-of-way usage prior to implementation of these rates.

I. Introduction

Pursuant to TEX. LOC. GOV'T CODE § 283.055(b),¹ the Public Utility Commission of Texas (Commission) is required to establish: (1) rates per access line by category for each municipality; and (2) the statewide average of those rates per access line by category for each certificated telecommunications provider (CTP). Both of these requirements were met when the Commission adopted municipal rates and CTP statewide averages.²

However, due to either nonparticipation or subsequent incorporation by certain municipalities, the Commission did not set rates for all existing Texas municipalities in May 2000. This Order establishes the fee per access line rates for one newly participating municipality: the City of Munday. This municipality existed in 1998, but chose after May 2000

¹ All references hereinafter to statutory sections and chapters relate to the TLGC Ann. §§ 283.001-283.058 (Vernon Supp. 1998) Added by Acts 1999, 76th Leg., ch. 840, §1, EFF. Sept. 1, 1999, unless otherwise stated.

² *Implementation of House Bill 1777*, Docket No. 20935, Order (May 3, 2000).

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to participate in the framework established in Ch. 283 for compensation of public right-of-way usage. Valor Telecommunications (Valor) provided access line counts for the City, which the Commission applied to the City of Munday's 1998 base amount. The City elected to use the Commission-established default allocation, pursuant to Ch. 283 and P.U.C. SUBST. R. 26.467 regarding *Rates, Allocation, Compensation, Adjustments and Reporting*. This municipality has elected to impose the maximum rates, and it is that maximum rate that is reflected in Exhibit A.

II. Findings of Fact

1. The Commission's records establish a cumulative line count for all reporting CTPs within the City's municipal boundaries.
2. Although eligible to participate, some municipalities did not participate in the framework established in Ch. 283 for compensation of public right-of-way usage, but are now electing to do so.
3. The City of Munday existed in 1998, but chose after May 2000 to participate in the framework established in Ch. 283 for compensation of public right-of-way usage.
4. The Commission did not set rates for all existing Texas municipalities in May 2000, due to either nonparticipation or subsequent incorporation by certain municipalities.
5. The Commission has established maximum rates for the City using the formula established in P.U.C. SUBST. R. 26.467(c), as reflected in Exhibit A.
6. The City has notified the Commission of its desire to impose the maximum rates.

7. On April 6, 2001, the Commission determined that Ch. 283 does not authorize implementation of surcharges with respect to newly participating cities in the initial establishment of rates.³

III. Conclusions of Law

1. The Commission has jurisdiction of this matter under Local Government Code §§ 283.005, 283.051, 283.055, and 283.058, as well as PURA §§ 14.001, 14.002, 14.003, and 52.002.
2. The fee per access line rates established by the Commission, when applied to the total number of access lines by category in the City of Munday, is equal to that municipality's base amount.
3. The fee per access line rates, as established by the Commission, accepted by the municipality, and shown in Exhibit A, are consistent with and meet the requirements of Ch. 283 and the Commission's rules.
4. Consistent with Finding of Fact No. 7, the Commission finds that no authority exists under Ch. 283 to allow surcharges with respect to newly participating municipalities.
5. The purpose of Ch. 283 is to establish a uniform method for compensating municipalities for the use of a public right-of-way by CTPs that: (1) is administratively simple for municipalities and telecommunications providers; (2) is consistent with state and federal law; (3) is competitively neutral; (4) is nondiscriminatory; (5) is consistent with the burdens on municipalities created by the incursion of certificated telecommunications providers into a public right-of-way; and (6) provides fair and reasonable compensation for the use of a public right-of-way.

³ *Issues Relating to Access Line Reporting and Compensation Pursuant to Substantive Rules 26.465 and 26.467, Project No. 23379, Open Meeting Tr. at 45 (April 6, 2001).*

6. Section 283.051(a) provides that a CTP that provides telecommunications services within a municipality is required to pay as compensation to a municipality for use of the public rights-of-way in the municipality only the amount determined by the Commission under § 283.055.
7. Section 283.051(c) provides that fees imposed under Ch. 283 constitute “a municipal fee” or “municipal fees” within the meaning of PURA⁴ §§ 51.009 and 54.206.
8. Section 283.053(b) provides that the base amount for a municipality is the total amount of revenue received by the municipality in franchise, license, permit, and application fees and in-kind services or facilities from CTPs in 1998 within the boundaries of the municipality.
9. Section 283.055(b) requires the Commission to establish: (1) for each municipality, rates per access line by category; and (2) the statewide average of those rates per access line by category. Consistent with § 283.055(c), when applied to the total number of access lines by category in the municipality, the Commission’s rates shall be equal to the base amount.
10. Section 283.055(d) requires that a municipality that wants to effect an allocation of the base amount over specific access line categories to be assessed rates must notify the Commission of the desired allocation. Participating municipalities included their requested allocation as part of the original base amount filings. Pursuant to §283.055(d), the Commission developed a default allocation of 1:2.3:3.5 that is reflected in P.U.C. SUBST. R. 26.467(e). This default allocation represents an average of all allocation ratios filed by participating municipalities.
11. P.U.C. SUBST. R. 26.465(g)(2)(A)(i) required all CTPs to file an access line count reflecting lines in place as of December 31, 1998, no later than January 24, 2000. If a

⁴ Public Utility Regulatory Act (PURA), as codified in TEX. UTIL. CODE ANN. §§ 11.001 – 64.158 (Vernon 1998 & Supp. 2001).

CTP could not file a 1998 access line count, that CTP could request a good cause exception and file the most recent line count available for December, 1999. Under P.U.C. SUBST. R. 26.467(d), where a CTP does not provide an actual 1998 access line count, the Commission shall use the CTP's 1999 access line count to derive an estimated 1998 access line count, using estimated statewide growth rate figures.

12. P.U.C. SUBST. R. 26.467(c) sets out the formula the Commission shall use to develop access line rates, by category, as follows:

B =	Total base amount for 1998.
A1 =	Allocation by percentage to Category 1 access lines.
A2 =	Allocation by percentage to Category 2 access lines.
A3 =	Allocation by percentage to Category 3 access lines.
L1 =	Number of access lines in Category 1.
L2 =	Number of access lines in Category 2.
L3 =	Number of access lines in Category 3.
R1 =	Fee per access line rate for Category 1.
R2 =	Fee per access line rate for Category 2.
R3 =	Fee per access line rate for Category 3.
R1 =	$(A1*B)/L1$
R2 =	$(A2*B)/L2$
R3 =	$(A3*B)/L3$
B =	$(L1*R1) + (L2*R2) + (L3*R3)$

V. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following Orders:

1. The fee per access line rates shall be as shown on Exhibit A for the City of Munday.

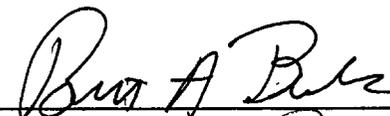
2. These rates shall be applied prospectively from the date of this Order.
3. This Order does not authorize surcharges for recovery of any compensation for right-of-way usage prior to implementation of these rates.
4. CTPs shall not impose surcharges with respect to newly participating municipalities.
5. CTPs shall implement the fee per access line rates as shown in Exhibit A for the City of Munday no later than June 1, 2003.
6. All other relief requested, unless granted herein, is denied.

ISSUED IN AUSTIN, TEXAS ON THE 2nd DAY OF May 2003.

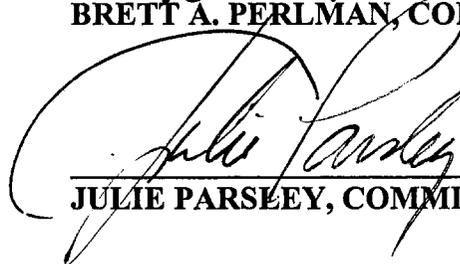
PUBLIC UTILITY COMMISSION OF TEXAS



REBECCA KLEIN, CHAIRMAN



BRETT A. PERLMAN, COMMISSIONER



JULIE PARSEY, COMMISSIONER

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Exhibit A

Municipality	Category 1	Category 2	Category 3
City of Munday	\$0.31	\$0.72	\$1.09