

PROJECT NO. 23236

RULEMAKING TO AMEND	§	PUBLIC UTILITY COMMISSION
§26.102 AND §26.107 AND	§	
RELATED FORMS REGARDING	§	OF TEXAS
PAY TELEPHONE SERVICE	§	
PROVIDERS	§	

**ORDER ADOPTING AMENDMENTS TO §26.102 AND §26.107
AS APPROVED AT THE MAY 24, 2001 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts amendments to §26.102 relating to Registration of Pay Telephone Service Providers and §26.107 relating to Registration of Interexchange Carriers, Prepaid Calling Services Companies, and Other Nondominant Telecommunications Carriers as published in the March 2, 2001 *Texas Register* (26 TexReg 1819). Section 26.102 is adopted with changes to the text as proposed. Section 26.107 is adopted with no changes to the text as proposed. The commission also adopts the revised Texas Pay Telephone Provider form. The amendments are necessary to clarify and simplify the registration process and annual update requirements. The form is revised to provide additional information needed by the commission to better understand and track this segment of the telecommunications market. The commission believes the data requested is necessary to the commission's understanding of this segment of the telecommunications market and provides sufficient resources to the commission for the protection of the public and enforcement, as necessary. These amendments are adopted under Project Number 23236.

After publication in the *Texas Register* the commission received comments on the proposed amendment to §26.102 from the Texas Payphone Association (TPA), Office of the Attorney General (OAG), and Southwestern Bell Telephone (SWBT).

Comments on §26.102(c)

Proposed subsection (c) contained the requirement that Pay Telephone Service (PTS) providers disclose the location of each pay telephone by county rather than the physical address as was required in the existing rule. Additionally, the proposed rule required the certificated telecommunications utility (CTU) connecting the PTS provider to the network to disclose to the commission the physical location of a pay telephone under investigation upon request by the commission. This information shall remain confidential unless the Attorney General or court of competent jurisdiction rules otherwise.

TPA supported the change in the proposed rule as preferable and less burdensome than retaining the original language requiring the PTS providers to report the physical location of each pay telephone. OAG opposed the change that PTS providers disclose location only by county. OAG commented that: (1) should a provider served by a CTU cease operations the commission is without the ability to locate phones that are no longer in service; (2) this change offered a loophole that would allow "bad actors" to falsely report numbers or locations that the commission could not verify; (3) requiring location by county is inefficient in processing consumer complaints and there

could be no expectation of full cooperation from a PTS provider under investigation; (4) lack of physical location information hindered any effort by the commission to determine which geographic areas were underserved by public payphones; and (5) the proposed rule as originally offered adequately satisfied the proprietary concerns of PTS providers regarding intervention by OAG. SWBT expressed concern that the amended rule required each CTU to maintain a list of the physical location of all PTS providers and that maintaining such a list was impractical and potentially anti-competitive.

The commission denies the recommendation of OAG and determines that the PTS providers should report the county location of pay telephones due to the low volume of complaints received by the commission and because the number of complaints continues to decline. The commission agrees with SWBT and the proposed rule and application form are modified accordingly.

Comments on §26.102(d)

TPA recommended that within a specified time frame the commission should notify CTUs of all PTS providers that have not reregistered annually and require CTUs to disconnect all PTS providers that have not reregistered.

The commission declines this recommendation. The commission will maintain a list of properly registered PTS providers on its web site and alert CTUs to monitor that list.

Comments on Revised Form

The commission's General Counsel recommended that the signed affidavit on the registration form be modified to reference requirements relating to payment into the Texas Universal Service Fund (TUSF).

The commission accepts this recommendation.

The commission makes minor changes in the rules to clarify its intent and to correct typographical and grammatical errors. All comments, including any not specifically referenced herein, were fully considered by the commission.

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998 & Supplement 2001) (PURA) which provides the commission with authority to make and enforce rules reasonably required in the exercise of its power and jurisdiction and specifically PURA §55.173, which provides that a Pay Telephone Service Provider must register with the commission.

Cross Reference to Statutes: Public Utility Regulatory Act, §14.002; Chapter 15, Subchapter B; Chapter 17, Subchapter B, and Chapter 55, Subchapter H.

§26.102. Registration of Pay Telephone Service Providers.

- (a) **Process.** All pay telephone service (PTS) providers must register with the commission, using commission-prescribed forms, in order to do business in the state of Texas. The commission shall provide each registrant with proof of registration within 30 days from the date the application is received, unless the application remains incomplete.
- (b) **Application form.** The application form shall request information deemed necessary by the commission in order to analyze this segment of the telecommunications market, monitor technological changes and advances, encourage a competitive environment, and protect the public interest.
- (c) **Disclosure of location.** Registration requires disclosure of the location by county of each of the registrant's pay telephones. Information related to the physical location of pay telephones shall be confidential pursuant to §22.71(d) of this title (relating to Filings of Pleadings, Documents and Other Materials) unless the Attorney General issues a letter opinion or a court of competent jurisdiction rules.
- (d) **Updates.** All PTS providers shall annually refile a registration form with the commission no later than July 31 of each calendar year.

- (e) **Network Access.** CTUs shall not provide pay telephone access service (PTAS) to a provider required to be registered under this section, unless that provider presents a commission-supplied proof of registration.
- (f) **Compliance enforcement.**
- (1) **Administrative penalties.** If the commission finds a registrant has violated any provision of this section, the commission shall notify the registrant by certified mail to take corrective action. If the registrant has not corrected the violation within ten working days from receipt of the notification letter a hearing pursuant to this section may be scheduled, as necessary, and the registrant may be subject to administrative penalties and other enforcement actions pursuant to Public Utility Regulatory (PURA), Chapter 15 and §22.246 of this title (relating to Administrative Penalties).
 - (2) **Revocation or suspension.** If the commission finds that a registrant is repeatedly in violation of PURA or commission rules, the commission may suspend or revoke a registration pursuant to PURA, Chapter 17 or PURA §55.180.
 - (3) **Enforcement.** 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.

§26.107. Registration of Interexchange Carriers, Prepaid Calling Services Companies, and Other Nondominant Telecommunications Carriers.

- (a) **Application.** This section applies to the registration of persons and entities who provide intralata and interlata long distance telecommunications services, prepaid calling services companies pursuant to §26.34 of this title (relating to Telephone Prepaid Calling Services), and other telecommunications services that do not require certification as established in the Public Utility Regulatory Act (PURA), Chapter 54, Subchapter C; except as noted in PURA §51.002(10) (relating to Definitions).
- (b) **Purpose.** Through this section, the commission strives to identify, monitor, and protect the public interest against telecommunications entities providing uncertificated telecommunications services. The commission's overall goal is to encourage the development of a competitive marketplace for nondominant telecommunications services, free of unreasonable barriers to entry, that will provide consumers with the best services at the lowest cost.
- (c) Each nondominant carrier not holding a certificate of operating authority (COA) or service provider certificate of operating authority (SPCOA) shall file with the commission the information set forth in paragraphs (1)-(10) of this subsection within 30 days of

commencing service in Texas. Each registered nondominant carrier shall keep this information updated and current at all times.

- (1) Legal name and all assumed names under which the registrant conducts business.
A registrant shall use only one name in which to provide telecommunications services to the public per registration;
- (2) Address of the principal office and business office;
- (3) Principal office and business office telephone number, fax number, website address, E-mail address, and toll-free customer service telephone number. (If the registrant has not obtained a toll-free customer service telephone number at the time of the registration, the registrant must commit to obtaining one before commencing business);
- (4) Date service commences/commenced in Texas;
- (5) Form of business (*e.g.*, corporation, partnership, sole proprietorship), state in which business was formed, certification/authorization number, and date business was formed;
- (6) Provide an organizational chart of the legal name of all affiliated companies that are public utilities or that are providing telecommunications services and the states in which they are providing service. Give a description of all affiliates and explain in detail the relationship between the registrant and its affiliates that operate in Texas.;
- (7) FCC Carrier Identification Code (CIC) or National Exchange Carriers Association (NECA) Operating Carrier Numbers (OCNs), if available;

- (8) Name, addresses, phone numbers, and e-mail/website address, and office location of each director, officer, or partner (if applicable);
 - (9) Names, addresses, phone numbers, and e-mail/website address of the five largest shareholders (if applicable); and
 - (10) Name, address, telephone number, and e-mail/website address of authorized/registered agent who can be contacted by the commission.
- (d) By June 30 of each year, each nondominant carrier shall file with the commission an updated registration form or a letter informing the commission that no changes have occurred. An uncertificated nondominant carrier failing to file an updated registration form by June 30 may no longer be considered to be registered with the commission. A letter of notice will be sent requiring reporting compliance within ten working days or a hearing may be set to consider de-registration of the nondominant carrier.
- (e) All nondominant carriers shall comply with the reporting requirements in §26.89 of this title (relating to Information Regarding Rates and Services of Nondominant Carriers).
- (f) **Compliance enforcement.**
- (1) **Administrative penalties.** If the commission finds that a registrant has violated any provision of this section, the commission shall order the registrant to take corrective action, as necessary, and the registrant may be subject to administrative

penalties and other enforcement actions pursuant to PURA, Chapter 15 and §22.246, of this title (relating to Administrative Penalties).

- (2) **Revocation or suspension.** If the commission finds that a registrant is repeatedly in violation of PURA or commission rules, the commission may suspend or revoke a registration pursuant to PURA Chapter 17 and shall direct all CTUs to discontinue provision of pay telephone access service to the PTS provider.
- (3) **Enforcement.** 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.

This agency hereby certifies that the rules, as adopted, have 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 §26.102 relating to Registration of Pay Telephone Service Providers is hereby adopted with changes to the text as proposed; and §26.107 relating to Registration of Interexchange Carriers, Prepaid Calling Services Companies, and Other Nondominant Telecommunications Carriers is hereby adopted with no changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 25th DAY OF MAY 2001.

PUBLIC UTILITY COMMISSION OF TEXAS

Chairman Pat Wood, III

Commissioner Brett A. Perlman