

PROJECT NO. 32169

PUC RULEMAKING PROCEEDING TO	§	PUBLIC UTILITY COMMISSION
ADD P.U.C. SUBST. R. 26.134 –	§	
REGARDING THE MARKET TEST TO	§	OF TEXAS
BE APPLIED IN DETERMINING IF	§	
MARKETS WITH POPULATIONS LESS	§	
THAN 30,000 SHOULD REMAIN	§	
REGULATED	§	

**PROPOSAL FOR PUBLICATION OF NEW §26.134
AS APPROVED AT THE MARCH 8, 2006, OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes new §26.134, relating to the Market Test to be Applied in Determining if Markets with Populations Less Than 30,000 Should Remain Regulated after January 1, 2007. The proposed new rule will establish the requisite market determinants for the commission to determine whether a market should be regulated after January 1, 2007. Project No. 32169 is assigned to this proceeding.

Larry D. Barnes and Jim Tourtelott of the commission's Communication Industry Oversight Division and Legal Division, respectively, have determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Barnes and Mr. Tourtelott have determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be effecting the requirements of PURA §65.052(f) in order to promote a more orderly transition to a new telecommunications environment. No adverse economic effects on small businesses or micro-businesses are anticipated as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Mr. Barnes and Mr. Tourtelott have also determined that for each year of the first five years the proposed section 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.

The commission staff will conduct a public hearing on this rulemaking under the Administrative Procedure Act, Texas Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, Friday, May 5, 2006, at 10:00 a.m.

Comments on the proposed new section may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-33269, within 30 days after publication. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted 40 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule. All comments should refer to Project No. 32169.

In addition to providing comments on proposal as published, the commission requests comments on the following: How should the commission account for any situations in which robust telecommunications competition exists in a market, but the type of competitors in the market does not fit the competitors delineated in subsection (c)?

This section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; and specifically, PURA §65.052(f), which requires *inter alia* “not later than November 30, 2006, the commission shall determine whether a market of an incumbent local exchange company in which the population in the area included in the market is less than 30,000 should remain regulated after January 1, 2007; the commission by rule shall determine the market test to be applied in determine whether the market should remain regulated;” and PURA §65.003(b) which gives the commission authority to “adopt rules and conduct proceedings necessary to administer and enforce this chapter, including rules to determine whether a market should remain regulated, deregulated, or should be re-regulated.”

Cross Reference to Statutes: Public Utility Regulatory Act §14.002, §14.052, §65.003, and §65.052(f).

§26.134. Market Test to be Applied in Determining if Markets with Populations Less Than 30,000 Should Remain Regulated on or After January 1, 2007.

- (a) **Purpose.** The purpose of this section is to establish the market tests to be applied in determining if markets with populations less than 30,000 should remain regulated after January 1, 2007.
- (b) **Application.** This section applies to all incumbent local exchange companies (ILECs), as defined in §26.5 of this title (relating to Definitions).
- (c) **Market Test** – Markets as defined in Public Utility Regulatory Act Section 65.002 with a population of less than 30,000 shall be deregulated only if the ILEC providing services to such a market submits evidence demonstrating that the population in the market is less than 30,000 and in addition to the ILEC there are three competitors:
- (1) of which at least one competitor is an entity providing residential telephone service in the market using facilities that the entity or its affiliate owns; and
 - (2) of which at least two competitors must be from two different categories of the following:
 - (A) a telecommunications provider that holds a certificate of operating authority or service provider certificate of operating authority and provides residential local exchange telephone service in the market;
 - (B) a provider in that market of commercial mobile service as defined by Section 332(d), Communications Act of 1934 (47 U.S.C. Section 151 et. Seq.), Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993 (Pub. L. No. 103-66), that is not affiliated with the incumbent local exchange company; and

(C) a satellite telecommunications provider certified as an eligible telecommunications carrier for the entire market pursuant to §26.418 of this title (relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds).

(d) **Rural Exemption Waiver.** In the event that an ILEC seeking deregulation of a market area with a population of less than 30,000 has a rural exemption as provided for in Section 251(f)(1) “Exemption For Certain Rural Telephone Companies” of the Communications Act of 1934, a petition for the removal of that rural exemption must be filed by the ILEC and approved by the commission in order for the market in question not to remain regulated. In addition, any such market must meet the conditions of the market test set forth in subsection (c) of this section.

(e) **Timing:**

(1) Markets shall be deregulated on January 1, 2007, only if the ILEC providing service to such a market(s) submits evidence on or before August 1, 2006, in compliance with subsection (c) of this section and, if applicable, subsection (d) of this section.

(2) After July 1, 2007, an ILEC petitioning for deregulation of a market with a population of less than 30,000 shall submit with its petition the evidence in compliance with subsection (c) of this section and, if applicable, subsection (d) of this section.

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 9th DAY OF MARCH 2006 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**

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