

**PROJECT NO. 32136**

**PUC REVIEW OF CHAPTER 26                    §            PUBLIC UTILITY COMMISSION**  
**SUBSTANTIVE RULES TO CONFORM        §**  
**TO SB 5    §    OF TEXAS**

**PROPOSAL FOR PUBLICATION OF AMENDMENTS TO §§26.223,  
26.224, 26.225, 26.401, 26.404, 26.406, 26.408 AND 26.423  
AS APPROVED AT THE MAY 10, 2006 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to:

§26.223, relating to Prohibition of Excessive COA/SPCOA Usage Sensitive Intrastate Switched Access Rates;

§26.224, relating to Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies;

§26.225, relating to Requirements Applicable to Nonbasic Services for Chapter 58 Electing Companies;

§26.401, relating to Texas Universal Service Fund (TUSF);

§26.404, relating to Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan;

§26.406, relating to Implementation of the Public Utility Regulatory Act §56.025;

§26.408, relating to Additional Financial Assistance (AFA); and

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

The proposed amendments will make minor, non-policy affecting, changes to Chapter 26 Substantive Rules to bring them into conformance with associated minor changes in the Public Utility Regulatory Act (PURA) brought about by Senate Bill 5, 79<sup>th</sup> Legislature, Second Called Session. Substantive Rules §26.417 and §26.420 have also been found to require minor modifications to bring them into conformance with associated minor changes in PURA, but these two sections already have pending proposed rule changes (Project Nos. 24522 and 29077).

Therefore, additional rulemaking will not proceed on §26.417 and §26.420 until the prior proposed rule changes go into effect. Project Number 32136 is assigned to this proceeding.

Rick Talbot, Policy Analyst, Communications Industry Oversight, and James Tourtelott, Staff Attorney, Telecommunications Legal Section, 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. Talbot 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 the administrative efficiency of the Chapter 26 Substantive Rules conforming to PURA. There will be no adverse economic effect on small businesses or micro-businesses 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. Talbot 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, if requested pursuant to 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 on Thursday, July 13, 2006 at 10:00 a.m. The request for a public hearing must be received within 31 days after publication.

Comments on the proposed amendments 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 31 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 within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule(s). The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 32136.

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005) (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, §§52.155(a) and (c), 56.021, 56.025(a), 56.026(e), 58.051, 58.151, and Chapter 65, which provide the authority for the various rule changes made herein.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 52.155(a) and (c), 56.021, 56.025(a), 56.026(e), 58.051, 58.151, and Chapter 65.

**§26.223. Prohibition of Excessive COA/SPCOA Usage Sensitive Intrastate Switched Access Rates.**

(a) – (b) (No change.)

(c) **Requirements for COA/SPCOA usage sensitive intrastate switched access rates.** A telecommunications utility that holds a COA or a SPCOA may not charge a higher aggregate amount, including any rate elements not charged by the holder of the certificate of convenience and necessity (CCN), for originating or terminating usage sensitive intrastate switched access than the prevailing rates charged by the CCN holder or the holder of a COA issued under Chapter 65 in whose territory the call originated or terminated unless:

(1) – (2) (No change.)

(d) **Governance of Switched Access Rates under PURA Chapter 65.** Notwithstanding subsection (c) of this section, PURA Chapter 65 governs the switched access rates of a company that holds a COA issued under PURA Chapter 65.

(e)(f) **Statewide average composite rates.** The commission shall establish weighted statewide average composite usage sensitive intrastate switched access rates within 60 days of the effective date of this section. Weighted statewide average composite usage sensitive intrastate switched access rates will be developed based upon the submission of CCN holders' compliance filings pursuant to subsection (g)(f) of this section.

(1) **Methodology.** The commission shall employ the following methodology for development of the weighted statewide average composite usage sensitive intrastate switched access rates separately for each originating and for each terminating rate element category in subsection (g)(f)(1)(A)-(F):

- (A) Each CCN holder's individual rate elements' rates will be multiplied by the total actual minutes of use (MOUs) for that rate element, producing a total revenue for each rate element for each CCN holder.
  - (B) Revenues for each CCN holder's rate element will be added to create a statewide total revenue for that rate element.
  - (C) The actual MOUs for each CCN holder's rate element will be added to create a statewide total actual MOUs for that rate element.
  - (D) The statewide total revenue for that rate element will be divided by the statewide total actual MOUs for that rate element, producing a weighted statewide average composite usage sensitive intrastate switched access rate for that switched access rate element.
- (2) **Recalculation.**
- (A) The commission shall re-calculate the weighted statewide average composite usage sensitive intrastate switched access rates biennially based upon the submissions of the CCN holders, as required in subsection ~~(g)~~(f) of this section. The re-calculated rates will become effective November 1 of that year.
  - (B) Any certificated telecommunications utility may file a petition requesting that the commission re-calculate the weighted statewide average composite usage sensitive intrastate switched access rates at any time, but no sooner than six months from the effective date of this section or most recent re-calculation. The commission shall initiate re-calculation if it concludes that the petition has provided just cause for re-calculation.

- (C) As provided in subsection ~~(g)~~(f) of this section, the commission may also require compliance submissions by CCN holders for re-calculation of the weighted statewide average composite usage sensitive intrastate switched access rates as appropriate because of significant changes in usage sensitive intrastate switched access rates or in response to the request of affected parties, as specified in subparagraph (B) of this paragraph.

~~(f)~~(e) **Approval of higher rates.**

- (1) A COA/SPCOA holder seeking approval of originating and/or terminating usage sensitive intrastate switched access rates that in the aggregate, including any rate elements not charged by the CCN holder, are higher than the aggregate of the originating and/or terminating usage sensitive switched access rate elements charged by the CCN holder in the COA/SPCOA's territory may do so by filing an application with the commission subject to the procedures outlined in Procedural Rule §22.33 of this title (relating to Tariff Filings). The COA/SPCOA's application must provide, at a minimum, the following information:
- (A) Cost justification for each rate element.
- (B) Rationale for implementation of the higher rate for each rate element.
- (2) A COA/SPCOA holder's application must address all of the applicable switched access rate elements in subsection (b) of this section.
- (3) The commission shall publish notice of the application in the *Texas Register*.

~~(g)~~(f) **Requirement for CCN holders compliance submissions.**

- (1) Within 30 days from the effective date of this section, all CCN holders must provide the following intrastate data to the commission as a compliance filing:

- (A) The current tariffed rate for originating and terminating CCL.
  - (B) The current tariffed rate for originating and terminating LS.
  - (C) The current tariffed rate for originating and terminating TR.
  - (D) The current tariffed rate for originating and terminating TS.
  - (E) The current average per minute rate for originating and terminating TST.
  - (F) The current originating and terminating tariffed rate(s) for any other usage sensitive intrastate switched access rate element(s).
  - (G) The total actual originating and terminating MOUs for the most recent 12 month period for each rate element in subparagraphs (A) – (F) of this paragraph.
- (2) Biennially all CCN holders must provide the following intrastate data to the commission as a compliance filing by June 1 of the year:
- (A) The current tariffed rate for originating and terminating CCL.
  - (B) The current tariffed rate for originating and terminating LS.
  - (C) The current tariffed rate for originating and terminating TR.
  - (D) The current tariffed rate for originating and terminating TS.
  - (E) The current average per minute rate for originating and terminating TST.
  - (F) The current originating and terminating tariffed rate(s) for any other usage sensitive intrastate switched access rate element(s).
  - (G) The total actual originating and terminating MOUs for the most recent 12 month period for each rate element in subparagraphs (A) - (F) of this paragraph.

~~(h)(g)~~ **Requirements of COA/SPCOA holders compliance submissions.**

- (1) Within 90 days of the effective date of this section, each COA/SPCOA holder shall either:
  - (A) file an application under subsection ~~(f)~~(e) of this section;
  - (B) file compliance tariffs/price lists effective 125 days from the effective date of this section containing originating and terminating usage sensitive intrastate switched access rates that do not exceed the prevailing rates charged by the CCN holder in each territory in which the COA/SPCOA holder operates;
  - (C) file compliance tariffs/price sheets with originating and terminating usage sensitive intrastate switched access rates that do not exceed the weighted statewide average composite usage sensitive switched access rates established by the commission effective 125 days from the effective date of this section; or
  - (D) file a letter with the commission demonstrating that no rate revisions are necessary in order to comply with this section.
- (2) If the commission subsequently recalculates the weighted statewide average composite usage sensitive switched access rates, no later than 30 days after the commission recalculates the weighted statewide average composite usage sensitive switched access rates, COA/SPCOA holders shall either:
  - (A) file an application under subsection ~~(f)~~(e) of this section;
  - (B) file compliance tariffs/price lists effective 45 days from the filing date of the compliance tariffs/price lists containing originating and terminating usage sensitive intrastate switched access rates that do not exceed the

prevailing rates charged by the CCN holder in each territory in which the COA/SPCOA holder operates;

- (C) file compliance tariffs/price sheets with originating and terminating usage sensitive intrastate switched access rates that do not exceed the recalculated weighted statewide average composite usage sensitive switched access rates established by the commission effective 45 days from the filing date of the compliance tariffs/price sheets; or
  - (D) file a letter with the commission demonstrating that no rate revisions are necessary in order to comply with this section.
- (3) If a COA/SPCOA holder establishes usage sensitive intrastate switched access rates pursuant to paragraphs (1)(B) or (2)(B) of this subsection and the underlying CCN holder(s) whose rates were the basis for the COA/SPCOA holder's usage sensitive intrastate switched access rates are modified, no later than 30 days after said CCN holder's rates are modified, the COA/SPCOA holder shall either:
- (A) file an application under subsection ~~(f)(e)~~ of this section;
  - (B) file compliance tariffs/price lists effective 45 days from the filing date of the compliance tariffs/price lists containing originating and terminating usage sensitive intrastate switched access rates that do not exceed the prevailing rates charged by the CCN holder in each territory in which the COA/SPCOA holder operates;
  - (C) file compliance tariffs/price sheets with originating and terminating usage sensitive intrastate switched access rates that do not exceed the most recent commission established weighted statewide average composite

usage sensitive switched access rates established by the commission effective 45 days from the filing date of the compliance tariffs/price sheets; or

- (D) file a letter with the commission demonstrating that no rate revisions are necessary in order to comply with this section.

~~(i)(h)~~ **Texas Register notice.** Notice shall be published in the *Texas Register* at the time of a CCN holder's application with the commission to revise its usage sensitive intrastate switched access rates or when the commission re-calculates the weighted statewide average composite usage sensitive intrastate switched access rates.

**§26.224. Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies.**

(a) – (b) (No change.)

(c) **Basic network services.**

(1) **Services included in basic network services.** Unless reclassified pursuant to PURA §58.024, the following are classified as basic network services pursuant to PURA §58.051(a):

(A) – (J) (No change.)

(K) Residential caller identification services if the customer to whom the service is billed is at least 65 years of age.~~Residential call-waiting service.~~

(2) – (5) (No change.)

(6) At the election of the affected incumbent local exchange company, the price for basic network service shall also include the fees and charges for any mandatory extended area service arrangements, mandatory expanded toll-free calling plans, and any other service included in the definition of basic network service.

(7) A nonpermanent expanded toll-free local calling service surcharge established by the commission to recover the costs of mandatory expanded toll-free local calling service:

(A) is considered a part of basic network service;

(B) may not be aggregated under subsection (c)(6) of this section; and

(C) continues to be transitioned in accordance with commission orders and substantive rules.

(d) – (l) (No change.)

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

(a) – (b) (No change.)

(c) **Nonbasic services.**

(1) Consistent with PURA §58.151 and §58.024, these services are nonbasic services:

(A) – (E) (No change.)

(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) – (S) (No change.)

(2) (No change.)

(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) – (ii) (No change.)

(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) (No change.)

(B) (No change.)

(2) (No change.)

(e) (No change.)

**§26.401. Texas Universal Service Fund (TUSF).**

(a) (No change.)

(b) **Programs included in the TUSF.**

(1) – (12) (No change.)

(13) Section 26.422 of this title (relating to Subsequent Petitions for Service to Uncertificated Areas); ~~and~~

(14) Section 26.423 of this title (relating to High Cost Universal Service Plan for Uncertificated Areas where an Eligible Telecommunications Provider (ETP) Volunteers to Provide Basic Local Telecommunications Service); ~~and~~

(15) Section 26.424 of this title (relating to Audio Newspaper Program).

**§26.404. Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan.**

(a) – (d) (No change.)

(e) **Small and Rural ILEC Universal Service Plan monthly per-line support.** A monthly per-line amount of support for each small or rural ILEC study area shall be determined in a one-time calculation using data from such small or rural ILEC's test year that has been audited by an independent auditor in conformance with generally accepted accounting principles (GAAP).

(1) – (2) (No change.)

(3) **Switched Access Service Rate Reductions.** To the extent that the disbursements from the universal service fund under PURA §56.021(1) for small and rural local exchange companies are used to decrease the implicit support in intraLATA toll and switched access rates, the decrease shall be made in a competitively neutral manner. This paragraph expires August 31, 2007.

(f) – (h) (No change.)

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

(a) (No change.)

(b) **Applicability.** An incumbent local exchange company (ILEC) serving fewer than ~~31,000~~five million access lines and each cooperative may seek to recover funds from the Texas Universal Service Fund (TUSF) under this section in the following circumstances:

(1) – (4) (No change.)

(c) – (e) (No change.)

**§26.408. Additional Financial Assistance (AFA).**

- (a) (No change.)
- (b) **Application.** Any ILEC that has been designated by the commission as an eligible telecommunications provider (ETP) and is not an electing company under the Public Utility Regulatory Act (PURA) Chapter 58, ~~or 59~~ or 65, may request AFA in a PURA §§53.105, 53.151, or 53.306 proceeding.
- (c) – (d) (No change.)

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

(a) – (d) (No change.)

(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 ~~holders~~holders and holders of a COA issued under PURA Chapter 65 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) (No change.)

(2) – (3) (No change.)

(f) – (g) (No change.)

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 MAY 2006 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
ADRIANA A. GONZALES**

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