

The Public Utility Commission of Texas (commission) proposes new §§26.311 relating to Information Relating to Operator Services; 26.313 relating to General Requirements Relating to Operator Services; 26.315 relating to Requirements for Dominant Certificated Telecommunications Utilities (DCTUs); 26.317 relating to Information to be Provided at the Telephone Set, 26.319 relating to Access to the Operator of a Local Exchange Company (LEC); and 26.321 relating to 9-1-1 Calls, "0-" Calls, and End User Choice. Project Number 17709 is assigned to this proceeding. The proposed new sections will replace §23.55 of this title (relating to Operator Services).

The Appropriations Act of 1997, HB 1, Article IX, Section 167 (Section 167) requires that each state agency review and consider for re adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or re adopting the rule continues to exist. The commission held three workshops to conduct a preliminary review of its rules. As a result of these workshops, the commission is reorganizing its current substantive rules located in 16 Texas Administrative Code (TAC) Chapter 23 to (1) satisfy the requirements of Section 167; (2) repeal rules no longer needed; (3) update existing rules to reflect changes in the industries regulated by the commission; (4) do clean-up amendments made necessary by changes in law and commission organizational

structure and practices; (5) reorganize rules into new chapters to facilitate future amendments and provide room for expansion; and (6) reorganize the rules according to the industry to which they apply. Chapter 26 has been established for all commission substantive rules applicable to telecommunications service providers. The duplicative sections of Chapter 23 will be proposed for repeal as each new section is proposed for publication in the new chapter.

General changes to rule language:

The proposed new sections reflect different section, subsection, and paragraph designations due to the reorganization of the rules. Citations to the Public Utility Regulatory Act have been updated to conform to the Texas Utilities Code throughout the sections and citations to other sections of the commission's rules have been updated to reflect the new section designations. Some text has been proposed for deletion as unnecessary in the new sections because the dates and requirements in the text no longer apply due to the passage of time and/or fulfillment of the requirements. The *Texas Register* will publish these sections as all new text. Persons who desire a copy of the proposed new sections as they reflect changes to the existing section in Chapter 23 may obtain a redlined version from the commission's Central Records under Project Number 17709.

Other changes specific to each section:

Proposed new §26.311 states the purpose of the subchapter on operator services, defines "rate information" as the term applies to Subchapter M, establishes standards for complaints relating to operator service providers, and establishes standards for enforcement of violations. This section will replace §23.55(a), (b), (h) and (n). Section 23.55(o) regarding severability is proposed for deletion with no corresponding section in the new rules, because the relevant language is now included in §26.3 of this title, relating to Severability Clause.

Proposed new §26.313 establishes the general requirements concerning operator services and replaces §23.55(c), (e), (f), (j), (l), and (m).

Proposed new §26.315 replaces §23.55(k) and establishes the requirements for dominant certificated telecommunications utilities.

Proposed new §26.317 replaces §23.55(d) and sets the standards for information to be provided at the telephone set.

Proposed new §26.319 replaces §23.55(i) and establishes access requirements for telephones intended to be utilized by the public. The phrase "Telephones intended to be utilized by the public" has been replaced with, "Telephones which are available for public use", in order to clarify the meaning. Proposed new §26.319 modifies §23.55(i)(3)(B)(iii) and deletes §23.55(i)(3)(B)(vii) as no longer necessary.

Proposed new §26.321 replaces §23.55(g) and sets minimum emergency standards for operator service providers that provide operator service to telephones intended to be utilized by the public.

Mr. Christopher Green, Attorney, Office of Regulatory Affairs, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Green has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be to continue to require operator service providers to meet various technical and informational standards that are important for providing service to the public. There will be no effect on small businesses or micro-businesses as a result of enforcing these sections. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Mr. Green has also determined that for each year of the first five years the proposed sections are in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

Comments on the proposed new sections (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 30 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed sections. The commission will consider the costs and benefits in deciding whether to adopt the sections. The commission also invites specific comments regarding the Section 167 requirement as to whether the reason for adopting or readopting the rule continues to exist. All comments should refer to Project Number 17709.

These new sections are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (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. Specifically, these sections are proposed under PURA §§55.081 - 55.089 that grant the commission authority to adopt rules that regulate operator service providers.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, and 55.081-55.089.

SUBCHAPTER M, OPERATOR SERVICES.

§26.311. Information Relating to Operator Services.

- (a) **Purpose.** The provisions of this subchapter are intended to ensure that competitive operator services are provided in a fair and reasonable manner and to maximize consumer choice by ensuring that consumers have access to their carriers of choice when using telephones intended for use by the public.
- (b) **Definition.** The term "rate information", when used in this subchapter, shall mean all charges ultimately charged to the end user by the operator service provider (OSP), including any surcharges, fees, and any other form of compensation charged by the OSP on behalf of the call aggregator.
- (c) **Complaints Relating to Operator Services.**
- (1) The OSP shall have a toll-free telephone number that callers may use, during normal business hours, to voice complaints and make inquiries. After normal business hours, the OSP shall have an answering machine/mechanism to receive complaints.
- (2) Section 26.30 of this title (relating to Complaints) shall apply to all complaints under this subchapter.

- (3) The commission may formally investigate any complaint against any OSP, interexchange carrier or dominant certificated telecommunications utility alleged to have violated the provisions of this subchapter. The company shall be given an opportunity to informally resolve any complaint involving violation of these rules. If no resolution is achieved informally, the commission may formally investigate the complaint upon its own motion or upon request of the original complainant.
- (d) **Enforcement.** Upon proper notice, evidentiary hearing, and determination that a violation has occurred or is about to occur, the commission may take action to stop, correct or prevent the violation. Any OSP found to be in violation of provisions of this subchapter is subject to administrative penalties, civil penalties, and injunctive relief pursuant to the Public Utility Regulatory Act §§15.023, 15.028, and 15.021.

§26.313. General Requirements Relating to Operator Services.

- (a) **Requirements to provide operator service.**
- (1) An operator service provider (OSP) that provides end user operator services for a call aggregator through a telephone which is available for public use must do so pursuant to a contract with the call aggregator, as a presubscribed

interexchange carrier, or, in the case of a dominant certificated telecommunications utility (DCTU), pursuant to a tariff approved by the commission.

- (2) Notwithstanding the provisions of paragraph (1) of this subsection, an OSP that owns or otherwise controls telephones which are available for public use shall for those telephones comply with all provisions of this subchapter otherwise required to be included in contracts between OSPs and call aggregators, without the necessity of a contract.
- (3) Where a different OSP is presubscribed for operator services at pay telephones owned by a DCTU, the DCTU shall for those telephones comply with all provisions of this subchapter otherwise required to be included in contracts between OSPs and call aggregators.
- (4) If a DCTU or presubscribed interexchange carrier provides operator services through telephones which are available for public use, other than those telephones subject to paragraphs (2) and (3) of this subsection, and pays fees or other forms of compensation to a call aggregator, the DCTU or presubscribed interexchange carrier shall do so pursuant to a contract with the call aggregator.

(b) **Requirements before call is completed.** The provider of operator services shall:

- (1) audibly and distinctly identify itself to the customer upon answering calls;

- (2) audibly and distinctly identify itself to the billed party if the billed party is different from the caller;
 - (3) quote rate information at the caller's request, without charge, 24 hours a day, seven days a week; and
 - (4) permit the caller to terminate the call at no charge prior to completion of the call by the OSP.
- (c) **Requirements for uncompleted call.** There shall be no charge to the caller for any uncompleted call.
- (1) No OSP shall knowingly bill for uncompleted calls.
 - (2) If the OSP cannot determine with certainty that a call was completed, it shall provide a full credit for any call of one minute or less upon being informed by a customer that the call was not completed.
 - (3) An uncompleted call includes, but shall not be limited to:
 - (A) calls terminating to an intercept recording, line intercept operator, or a busy tone; or
 - (B) calls that are not answered.
 - (4) An uncompleted call does not include calls using busy line interrupt, line status verification, or directory assistance services.
- (d) **Requirement to provide access to a live operator.**

- (1) Each telecommunications utility that provides operator services shall ensure that a caller may access a live operator at the beginning of all automated operator-assisted calls through a method designed to be easily and clearly understandable and accessible to the caller. This requirement applies only to "0-" calls where the caller reaches an automated operator. Within 30 days of initially providing operator services each such telecommunications utility shall file in the Central Records Office of the commission, for review, a document describing the method by which the utility is providing access to a live operator, as provided by the Public Utility Regulatory Act §55.088.
 - (2) This subsection applies regardless of the method by which the telecommunications utility provides the operator service.
 - (3) The requirements of this subsection shall not apply to telephones located in confinement facilities.
- (e) **Call splashing.** Call splashing is call transferring (whether caller requested or OSP initiated) that results in a call being rated and/or billed from a point different from that where the call originated. Call splashing shall not be allowed unless a waiver of the access requirements in §26.319(1)(A) of this title (relating to Access to the Operator of a Local Exchange Company (LEC)) has been granted pursuant to §26.319(3) of this title and unless:

- (1) the originating OSP first clearly and explicitly notifies the caller that the call will be splashed and may result in rating and/or billing of the call from a point different from that where the call originated; and
 - (2) the originating OSP allows the caller to abort the call without charge after notification that the call will be splashed.
- (f) **Other requirements.**
- (1) OSPs that are not DCTUs are subject to the requirements contained in the Public Utility Regulatory Act and the commission's substantive rules for nondominant telecommunications utilities.
 - (2) If an OSP provides a local exchange company with access information, the OSP must provide a single access code; must detail, by NPA-NXX, where the access code can be used to access the OSP; and must provide the local exchange company with appropriate instructions for use of the access code. The OSP is responsible for ensuring that the access code specified is available for each NPA-NXX listed and for updating the information.

§26.315. Requirements for Dominant Certificated Telecommunications Utilities (DCTUs).

- (a) Each DCTU shall make validation information (e.g. DCTU calling card numbers, whether an access line is equipped with billed number screening, or whether an access line is a pay telephone) available to any interexchange carrier requesting it on the same prices, terms, and conditions that the DCTU provides the service to any other interexchange carrier. The DCTU may comply with the requirements of this paragraph by providing its own database, making arrangements with another DCTU to provide the information, or making arrangements with a third-party vendor.

- (b) Each DCTU shall offer billing and collection services to any interexchange carrier requesting it on the same prices, terms, and conditions that the DCTU provides the services to any other interexchange carrier. If validation information is available for calls that the interexchange carrier (or a third-party billing and collection agent operating on behalf of the interexchange carrier) will bill through the DCTU, the interexchange carrier is required to validate the call and is allowed to submit the call for billing only if the call was validated.

- (c) If a DCTU receives a request from a caller to access another carrier, the DCTU shall, using the same prices, terms, and conditions for all carriers, either:

- (1) transfer the caller to the caller's carrier of choice if facilities that allow such transfer are available and if such transfer is otherwise allowed by law; or
- (2) instruct the caller how to access the caller's carrier of choice if that carrier has provided the DCTU with the information referred to in §26.319(2) of this title (relating to Access to the Operator of a Local Exchange Company (LEC)).

§26.317. Information to be Provided at the Telephone Set.

- (a) A contract between an operator service provider (OSP) and a call aggregator for the provision of operator services through telephones which are available for public use shall require the call aggregator to attach to each telephone set that has access to the operator service and that is available for public use, a card furnished by the OSP that provides:
 - (1) the name of the OSP;
 - (2) instructions for accessing the OSP, with a statement that the OSP will quote rate information upon request at no charge to the caller, 24 hours a day, seven days a week, or a statement that instructions for obtaining rate information are available at a designated toll-free telephone number, 24 hours a day, seven days a week;

- (3) instructions for accessing the operator of a local exchange company that meets the requirements of ~~§26.315(c)~~~~23.315(e)~~ of this title (relating to Requirements for Dominant Certificated Telecommunications Utilities (DCTUs)), or a statement that instructions for accessing such local exchange company operator are available at a designated toll-free telephone number, 24 hours a day, seven days a week, except local exchange companies meeting the requirements of §26.315(c) of this title are exempt from this paragraph if the local exchange company is the OSP for which instructions are posted pursuant to paragraph (2) of this subsection;
- (4) instructions for registering a complaint about the service at a designated toll-free telephone number;
- (5) instructions in English and Spanish for accessing emergency service; and
- (6) a notice that states, "You may use another long distance carrier. Follow your carrier's instructions, or contact the local exchange company operator for assistance." or, in the case of telephones that directly route "0-" calls to the local exchange company operator, a notice that states, "You may use another long distance carrier. Follow your carrier's instructions, or dial "0" for assistance."

(The local exchange company referred to in this paragraph must serve the area and meet the requirements of ~~§26.315(c)~~~~23.315(e)~~ of this title.)

- (b) Notwithstanding subsection (a) of this section, in the case of pay telephones owned by the DCTU, where the DCTU is the OSP for intraLATA operator service and another carrier is the OSP for interLATA operator service, the interLATA OSP shall inform the DCTU of the appropriate information to be posted, and the DCTU shall post the information required by subsection (a)(1), (2) and (4) of this section for the interLATA OSP. In addition, the DCTU shall post the information required by subsection (a)(5) and (6) of this section. After initial information cards are posted, DCTUs may file tariffs to recover from the OSPs presubscribed to pay telephones owned by the DCTUs the incremental cost for maintaining updated information cards plus a reasonable contribution.
- (c) The commission may approve applications for modification of the requirements contained in this section upon showing of good cause. Applications for modification may be filed by the call aggregator or by the OSP. The commission shall process applications for modification using the following criteria and procedures:
- (1) Each application for modification shall contain a certificate of service attesting that a copy of the request has been served upon the Office of Public Utility Counsel.
 - (2) Each application for modification shall clearly set forth the good cause for approval of the modification.

- (3) Each application for modification shall initially be assigned a project control number, assigned to a presiding officer, and reviewed administratively.
 - (A) No later than 30 days after the filing date of the application, interested persons other than the commission staff and the Office of Public Utility Counsel may file written comments or recommendations concerning the application. No later than 60 days after the filing of the application, the commission staff shall, and the Office of Public Utility Counsel may, file written comments or recommendations concerning the application.
 - (B) Within 90 days of filing, after administrative review, the presiding officer shall approve, deny, or docket the application. The presiding officer may postpone a decision on the application beyond the 90th day after filing if he or she finds that additional information is needed.
- (4) Any participating party may request, within ten days of the presiding officer's order approving or denying the application, that the application be docketed, and upon such request, the application shall be docketed.
- (5) If the presiding officer either approves or denies the application for modification and no participating party has requested that the application be docketed, a copy of the presiding officer's ruling shall be provided to the commission. The commission may, within 40 days of the presiding officer's ruling, overrule the approval or denial and order that the application for modification be docketed.

- (d) The requirements of this section shall not apply to telephones located in confinement facilities.

§26.319. Access to the Operator of a Local Exchange Company (LEC).

A contract between an operator service provider (OSP) and a call aggregator for the provision of operator services through telephones which are available for public use shall require that the call aggregator allow access to the operator of a local exchange company that meets the requirements enumerated in §26.315(c) of this title (relating to Requirements for Dominant Certificated Telecommunications Utilities (DCTUs)) and serves the area from which the call is made, and to other telecommunications utilities unless otherwise provided in paragraph (3) of this section.

- (1) The access required by this subsection shall be provided subject to the conditions contained in subparagraphs (A) - (C) of this paragraph.
- (A) Access to such local exchange company operator shall be accomplished either:
- (i) by directly routing all "0-" calls to the local exchange company operator, without charge to the caller; or
 - (ii) by transfer or redirection of the call by the OSP, without charge to the caller, in accordance with the requirements of subclauses (I)-(III) of this clause:

- (I) the OSP shall transfer or redirect the call to such local exchange company operator serving the originating area;
 - (II) the OSP shall transfer or redirect the call to such local exchange company operator in such a way that the local exchange company operator receives all signaling information (e.g., ANI and OLS) that would have been received by the local exchange operator if the call had been directly routed to the local exchange company; and
 - (III) the OSP shall be in compliance with the requirements of §26.321 of this title (relating to 9-1-1 Calls, "0-" Calls, and End User Choice).
- (B) Access to interexchange carriers by "950-XXXX" and "1-800" numbers shall not be blocked.
- (C) Access to interexchange carriers by "1010XXX+0" (whether "1010XXX+0+" or "1010XXX+0-") dialing shall not be blocked if the end office serving the originating line has originating line screening capability. A nonpresubscribed interexchange carrier shall not bill the call aggregator or the presubscribed interexchange carrier for local or toll messages originated at the call aggregator's facility by use of

"1010XXX+0" (whether "1010XXX+0+" or "1010XXX+0-") dialing, or where the calls originated at the call aggregator's facility and otherwise reached an operator, if the call aggregator has subscribed to the necessary local exchange company-provided outgoing call screening or has otherwise provided the necessary call screening to ensure that appropriate originating line screening is transmitted with each call.

- (2) The local exchange company that provides local service to the call aggregator shall provide to the call aggregator, upon request, the names, with addresses or telephone numbers, of interexchange carriers that can be accessed by use of "1010XXX" dialing from the call aggregator's facilities.
- (3) Waivers to the access requirement may be granted by the commission to prevent fraudulent use of telephone services or for other good cause. An application under subparagraph (B) of this paragraph is not required for any generic waiver granted by subparagraph (A) of this paragraph.
 - (A) The commission finds that the following generic waivers of the access requirement are required to prevent fraudulent use.
 - (i) Access to interexchange carriers by "1010XXX+0" (whether "1010XXX+0+" or "1010XXX+0-") dialing may be blocked if the end office serving the originating line does not have originating line screening capability.

- (ii) Access to interexchange carriers by "1010XXX+1" dialing may be blocked.
 - (iii) Access to the local exchange carrier operator and to other telecommunications utilities from telephones located in confinement facilities may be blocked.
- (B) Applications for waiver of the requirement for access to the local exchange carrier operator or to other telecommunications utilities to prevent fraudulent use of telephone service or for other good cause may be filed by the call aggregator or the OSP. The commission shall process such applications for waiver using the following criteria and procedures:
 - (i) Each application for waiver shall contain a certificate of service attesting that a copy of the application has been served upon the Office of Public Utility Counsel and affected telecommunications utilities, including those identified in paragraph (2) of this section and the local exchange companies serving the affected exchange. If the application for waiver pertains to technical limitations of certain equipment, the application for waiver shall contain a certificate of service attesting that a copy of the application has been served upon the Office of Public Utility Counsel and all telecommunications

utilities registered with or certificated by the commission. The certificate shall list the telecommunications utilities on which copies of the application were served.

- (ii) If the application for waiver pertains to technical limitations of certain equipment, the equipment shall be clearly identified in the application, including the manufacturer and the model. The application shall indicate the date of purchase of the equipment by the call aggregator, the extent to which equipment is available to allow the access requirements to be met, the associated costs, and the time requirements associated with equipment modifications.
- (iii) The access requirement shall be enforced while the application for waiver is pending.
- (iv) Each application for waiver shall initially be assigned a project control number, assigned to a presiding officer, and reviewed administratively.
 - (I) No later than 30 days after the filing date of the application, interested persons other than the commission staff and the Office of Public Utility Counsel may file written comments or recommendations concerning the application. No later than 60 days after

the filing of the application, the commission staff shall, and the Office of Public Utility Counsel may, file written comments or recommendations concerning the application.

- (II) Within 90 days of the filing, after administrative review, the presiding officer shall approve, deny, or docket the application. The presiding officer may postpone a decision on the application beyond the 90th day after filing if he or she finds that additional information is needed to determine whether good cause exists.
- (v) A participating party may request, within ten days of the presiding officer's ruling approving or denying the application, that the application be docketed, and upon such request, the application shall be docketed.
- (vi) If the presiding officer either approves or denies the application for waiver and no participating party has requested that the application be docketed, a copy of the presiding officer's ruling shall be provided to the commission. The commission may, within 40 days of the presiding officer's ruling, overrule the approval or denial and order that the request for waiver be docketed.

§26.321. 9-1-1 calls, "0-" calls, and End User Choice.

- (a) A contract between an operator service provider (OSP) and a call aggregator for the provision of operator services through telephones which are available for public use shall require the call aggregator to allow 9-1-1 calls to be outpulsed directly to the public service answering point without requiring a coin or credit card.

- (b) Where end user choice, as defined in §26.5 of this title (relating to Definitions), is not available, a contract between an OSP and a call aggregator for the provision of operator services through telephones which are available for public use shall require the call aggregator to allow "0-" calls and to directly, without charge to the calling party, route all "0-" calls to an OSP that provides access to emergency services that meet the technical standards set forth in paragraphs (1)-(6) of this subsection. The OSP shall:
 - (1) identify the originating telephone number and the location of the originating telephone, except dominant certificated telecommunications utilities (DCTUs) shall be allowed to identify the location using internal sources such as repair service or business office records if such internal sources are accessible to operators for emergency purposes 24 hours a day;

- (2) have a complete and current list of all emergency service provider telephone numbers for each NPA-NXX served, including, but not limited to, police or sheriff, fire, and ambulance;
 - (3) be available 24 hours a day, seven days a week, without requiring a coin or credit card;
 - (4) promptly connect the appropriate emergency service provider;
 - (5) stay on the line until such time as the operator determines that the caller has been connected to the proper emergency service provider; and
 - (6) require that the call aggregator make a test call when equipment providing access to the OSP is installed, serviced, or relocated and at least semi-annually from each originating telephone number subscribed to the OSP, in order to verify the originating telephone number and the location of the telephone, unless the OSP receives automatic number identification (ANI), as defined in §26.5 of this title (relating to Definitions) for that telephone number.
- (c) When and where available, use of end user choice is required.
- (d) The requirements of this section shall not apply to telephones located in confinement facilities.

- (e) Nothing in this section shall be deemed to require the initial routing of "0-" calls from pay telephones owned by a local exchange company that provides access to emergency service providers and that meets the requirements enumerated in §26.315 of this title (relating to Requirements for Dominant Certificated Telecommunications Utilities (DCTUs)) to any OSP other than the local exchange company itself.

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

**ISSUED IN AUSTIN, TEXAS ON THE 8th DAY OF SEPTEMBER 1999 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**