

PROJECT NO. 36260

RULEMAKING RELATING TO THE § PUBLIC UTILITY COMMISSION
OBLIGATIONS OF TELEPHONE §
PROVIDERS UNDER THE TEXAS § OF TEXAS
PROMPT PAYMENT ACT §

PROPOSAL FOR PUBLICATION OF NEW §26.33
AS APPROVED AT THE MARCH 11, 2010 OPEN MEETING

The Public Utility Commission of Texas (commission) proposes new rule §26.33 relating to the Prompt Payment Act. The rule will ensure that customers that are “governmental entities” under TEX. GOV’T CODE §2251.001-055 (Vernon 2007 and Supp. 2009) (Prompt Payment Act or PPA) are billed by certificated telecommunications utilities (CTUs) in compliance with the PPA. Project Number 36260 is assigned to this proceeding.

Janis Ervin, Senior Utility Analyst, Infrastructure and Reliability Division, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Ervin has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to ensure that CTUs comply with the PPA.

There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this rule. Therefore, no regulatory flexibility analysis is required. There may be economic costs to persons who are required to comply with the rule as a result of the rule’s

requirement that a CTU inquire of all applicants whether they are governmental entities as defined in the PPA and, for existing customers for which a CTU does not know whether they are governmental entities as defined in the PPA, that the CTU inquire within six months of the effective date of this rule whether the customers are governmental entities. These costs will vary from business to business, and are difficult to ascertain. However, this requirement is necessary to ensure compliance with the PPA by CTUs.

Ms. Ervin has also determined that for each year of the first five years the rule 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), TEX. GOV'T CODE §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the APA, §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Thursday, May 20, 2010 at 9:00 a.m. CST. The request for a public hearing must be received within 31 days after publication.

Comments on the rule may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Sixteen copies of comments are required to be filed pursuant to §22.71(c) of this title. Initial comments may be submitted by April 26, 2010 (within 31 days after publication), and reply comments may be submitted by May 10, 2010 (within 45 days) after publication. Comments should be organized in a manner consistent with the organization of the rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by,

implementation of the rule. The commission will consider the costs and benefits in deciding whether to adopt the rule. All comments should refer to Project Number 36260.

The new section is proposed under the Public Utility Regulatory Act, TEX. UTIL. CODE Annotated §14.002 (Vernon 2007 and Supp. 2009) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §§17.004 and 64.004, which authorize the Commission to adopt and enforce rules to protect customers from fraudulent, unfair, misleading, deceptive, or anticompetitive practices by CTUs.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 17.004, and 64.004.

§26.33. Prompt Payment Act.

- (a) **Application.** This section applies to billing by a certificated telecommunication utility (CTU) to a “governmental entity” as defined in TEX. GOV’T CODE, Chapter 2251, the Prompt Payment Act (PPA). This section controls over other sections of this chapter to the extent that they conflict.
- (b) **Bill due date.** A bill issued by a CTU to a governmental entity shall be due as provided in the PPA.
- (c) **Disputed bills.** If there is a billing dispute between a governmental entity and a CTU about any bill for CTU service, the dispute shall be resolved as provided in the PPA.
- (d) **Penalty on delinquent bills for retail service.** Any penalty for delinquency of payment of CTU billing to a governmental entity shall be in accordance with the PPA.
- (e) **Disclosure.** A CTU shall disclose to all governmental entities that they will be billed in accordance with the PPA.
- (f) **Inquiry.** A CTU shall inquire of all applicants for service whether they are governmental entities as defined in the PPA. For existing customers for whom a CTU does not know whether they are governmental entities as defined in the PPA, the CTU shall inquire within six months of the effective date of this section whether such customers are governmental entities.

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 12th DAY OF MARCH 2010 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**

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