PROJECT NO. 24389

RULEMAKING REGARDING CLEC-TO-CLEC AND CLEC-TO-ILEC MIGRATION GUIDELINES	§ § §	**PUBLIC UTILITY COMMISSION OF TEXAS**

PROPOSAL FOR PUBLICATION OF NEW §26.131
AS APPROVED AT THE MARCH 21, 2003 OPEN MEETING

The Public Utility Commission of Texas (commission) proposes new §26.131 relating to Competitive Local Exchange Carrier (CLEC)-to-CLEC and CLEC-to-Incumbent Local Exchange Carrier (ILEC) Migration Guidelines. The proposed new rule is necessary to ensure that: (1) customers can migrate from one CLEC to another or from a CLEC to an ILEC in a seamless manner without encountering abnormal delays, service interruptions, and cumbersome procedures; (2) customer are not switched from one telecommunications provider to another without their permission (also known as "slamming"); and (3) customers do not have unauthorized charges placed on their bills (also known as "cramming"). The guidelines proposed for publication in this rulemaking were developed through a collaborative process involving telecommunications providers and emergency 9-1-1 administrators. Project Number 24389 is assigned to this proceeding.

Patrick Tyler, Director of Telecommunications, Legal and Enforcement Division, has 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. Tyler has 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 establishment of standardized procedures, general business rules, and privacy protocols governing end user or customer migrations between CLECs, or from a CLEC to an ILEC with 31,000 or more access lines in Texas, to ensure that customers can seamlessly migrate from one telecommunications provider to another; and to ensure better customer protection against slamming and cramming. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. There may be economic costs to persons who are required to comply with the proposed section. These costs are likely to vary from business to business and are difficult to ascertain. However, it is believed that the benefits accruing from implementation of the proposed section will outweigh these costs.

Mr. Tyler has 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 §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 Monday, May 19, 2003, starting at 9:30 a.m. The request for a public hearing must be received within 30 days after publication of this proposed rule.

Comments on the proposed new section (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. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section, as well as whether to include provisions for line loss notifications. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 24389.

In addition, the commission requests comments on the following questions:

1. How do the CLEC-to-CLEC and CLEC-to-ILEC Migration Guidelines differ from the Local Service Ordering Guidelines (LSOG Issues 4 - 8) that have been developed in the ATIS-sponsored Ordering and Billing Forum (OBF)? What is the basis for any difference identified?
2. Should line-loss notification requirements be included in the CLEC-to-CLEC and CLEC-to-ILEC Migration Guidelines?

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2003) (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, PURA §17.001(b) and §64.001(b) which confer on the commission the authority to adopt and enforce rules to protect customers from fraudulent, unfair, misleading, deceptive, or anticompetitive practices; §51.001 which grants the commission authority to make and enforce rules necessary to protect customers of telecommunications services consistent with the public interest; §52.001 which requires that rules, policies and principles for formulated and applied to protect the public interest and to provide equal opportunity to each telecommunications utility in a competitive marketplace; and §17.004(a) and §64.004(a) which provide that all buyers of telecommunications services are entitled to a choice of a telecommunications service provider and to have that choice honored.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 17.001, 17.004, 51.001, 52.001, 55.016, Chapter 55, Subchapter K, 62.022, 64.001, and 64.004.

§26.131. Competitive Local Exchange Carrier (CLEC)-to-CLEC and CLEC-to-Incumbent Local Exchange Carrier (ILEC) Migration Guidelines.

(a) **Purpose**. The purpose of this section is to establish standardized procedures, general business rules, and privacy protocols governing end user or customer migrations between CLECs, or a CLEC and an ILEC that serves 31,000 or more access lines in the state, to ensure that:

(1) customers can migrate from one CLEC to another or from a CLEC to an ILEC in a seamless manner without encountering abnormal delays, service interruptions, and cumbersome procedures;

(2) customers are not switched from one telecommunications provider to another without their permission pursuant to §26.130 of this title (relating to Selection of Telecommunications Utilities); and

(3) customers do not have unauthorized charges placed on their bills pursuant to §26.32 of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming")).

(b) **Application.** This section applies to all CLECs and all ILECs with 31,000 or more access lines in the state. This section does not apply to Digital Subscriber Line (DSL) services, line sharing, or line splitting arrangements as defined by the Federal Communications Commission (FCC) or the commission, or to migrations resulting from a CLEC's exit from the Texas market or a major segment of the Texas market.

(c) **Terminology.** In this section, "CLEC" means a holder of either a certificate of operating authority (COA) or a service provider certificate of authority (SPCOA).

(d) **Migration guidelines**. All CLECs and applicable ILECs shall follow the *Texas CLEC-to-CLEC and CLEC-to-ILEC Migration Guidelines* when an end user or customer migrates from one CLEC to another or from a CLEC to an ILEC. These guidelines may only be changed through the rulemaking process.

Figure: 16 TAC §26.131(d)

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 27th DAY OF MARCH 2003 BY THE PUBLIC UTILITY COMMISSION OF TEXAS RHONDA G. DEMPSEY