

PROJECT NO. 21175

RULEMAKING TO ADDRESS THE	§	PUBLIC UTILITY COMMISSION
PROVISION OF ADVANCED	§	
SERVICES BY ELECTING	§	
COMPANIES, COA, OR SPCOA	§	OF TEXAS
HOLDERS IN RURAL SERVICE	§	
AREAS	§	

ORDER ADOPTING NEW §26.143, PROVISION OF ADVANCED SERVICES IN RURAL AREAS, AS APPROVED AT THE APRIL 18, 2002 OPEN MEETING

The Public Utility Commission of Texas (commission) adopts new §26.143, relating to Provision of Advanced Services in Rural Areas with changes to the proposed text as published in the November 9, 2001, *Texas Register* (26 TexReg 8958). This new section implements the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §51.001(g) and §55.014 (Vernon 1998 & Supplement 2002), regarding the provision of advanced services by a Chapter 58 electing company, certificate of operating authority (COA) holder, and service provider certificate of operating authority (SPCOA) holder (collectively companies) in rural areas when an advanced telecommunications service is provided in an urban area by the company. This new section is adopted under Project Number 21175.

In 1999, as part of Senate Bill 560, the 76th Legislature enacted PURA §55.014 to effectuate the deployment of advanced services in rural areas of the state. Furthermore, in the same bill, the Legislature enacted PURA §51.001(g) which pronounced that it is the policy of this state to ensure that customers in all regions of this state, including low-income customers and customers in rural and high cost areas, have access to advanced telecommunications and information services that are reasonably comparable to those services provided in urban areas and that are

available at prices that are reasonably comparable to prices charged for similar services in urban areas. Accordingly, this section is adopted in order to effectuate these provisions. This section provides rural retail customers with a competitive process for the provision of advanced services and ensures that retail customers in rural areas have access to reasonably comparable advanced services offered by companies subject to PURA §55.014.

This section sets forth procedures whereby a retail customer within a rural service area may seek advanced services in order to access the Internet. The section establishes in subsection (e) a competitive forum for any retail customers in a rural area to seek advanced services from any advanced services provider, the "competitive response process." Under this portion of the rule, rural retail customers may submit a written request to the commission for advanced services. The commission will post relevant portions of the request on the commission website so that providers become aware of the customer demand. Within 50 days after posting, any advanced services provider may submit a proposal to the rural area's contact person for provision of advanced services. Based on the proposals, the persons seeking the advanced services will then negotiate and select a provider for service. This market-based process allows the rural area and the provider to develop an appropriate strategy for deployment, including prices, terms, and conditions of service.

If no advanced services agreement is reached in the competitive response process, this section provides a mechanism in subsections (d) and (f) whereby retail customers in a rural area may secure access to services that are reasonably comparable to the advanced telecommunications services offered by companies within urban service areas. The section also sets forth the Bona

Fide Retail Request (BFRR) procedures that retail customers must utilize in order to request the reasonably comparable advanced services. The rule defines "rural area" and addresses the parameters for determining reasonably comparable advanced telecommunications services, including reasonably comparable prices, terms, and conditions. This section outlines the requirements of service and establishes commission proceedings for selection of serving companies after a BFRR.

As part of the drafting process, commission staff conducted several public workshops to gather information and input from the varied interests that are potentially affected by this section. After publication of the proposed new rule in the *Texas Register*, the commission received written comments from the following: AT&T Communications of Texas, L.P. (AT&T); the Honorable Susan Combs, Texas Commissioner of Agriculture; the Honorable Kim Brimer, State Representative; the Honorable Debra Danburg, State Representative; the Honorable Judy Hawley, State Representative; Southwestern Bell Telephone Company (SWBT); the State of Texas (State); Texas Cable and Telecommunications Association (TCTA); Verizon Southwest (Verizon); and XO Texas, Inc. and Time Warner Telecom of Texas, L.P. (collectively XO and TWTC). No person, under Government Code § 2001.029, requested a public hearing on this section.

General Comments

All of the Commenters are in general support of the rule's adoption. Verizon, however, while supporting many of its provisions takes issue with the rule because it may mandate advanced services deployment by the company. The remaining Commenters question specific provisions,

but recognize that the rule implements PURA §55.014 with a flexible structure that takes into account the complex and varied interests involved in a statewide policy for deployment of advanced services.

Representative Kim Brimer emphasized that a "one-size-fits-all" approach to advanced services deployment will not work in a state as geographically diverse as Texas and that the state must correctly identify the public policy issues, and where appropriate, design a framework that encourages investment in rural and urban areas. Representative Brimer stated that the rule effectively balances many complex interests and preserves the best of previous legislative work. To that end, Representative Brimer supported adoption of the rule because it recognizes that multiple technologies will be necessary for a comprehensive solution. In particular, Representative Brimer supported the competitive response process, which offers an additional option for communities that are not able to meet the BFRR threshold defined in the rule.

Representative Debra Danburg stated that the rule will contribute toward the goal of PURA §55.014, the increased availability of advanced services in rural areas. Representative Danburg supported the rule as published and stated that the rule strikes the right balance when considering the public policy considerations faced by the 77th Texas Legislature, especially given that PURA §55.014 presents different constraints than existed for the bills proposed in the Legislature. For example, Representative Danburg stated that the Legislature was able to mix both "carrots" and "sticks" in the proposed toolbox to bring additional services to places and people who want them. Because of the constraints of PURA §55.014, Representative Danburg explained that the commission has a different mix of available tools, but that the commission's rule fits the

Legislature's intent when adopting the statute. Moreover, Representative Danburg stated that the competitive response process improves upon the statute with a competitively neutral mechanism to encourage creative solutions for communities that have a need for services but that might not otherwise be able to establish a BFRR. The rule, according to Representative Danburg, carefully balances the difficult economics involved in the deployment of advanced services with the real needs of rural communities.

Representative Judy Hawley emphasized the importance of first encouraging the free market to meet the broadband needs of rural Texans and the necessity of keeping all proposals technologically neutral. Representative Hawley supported the competitive response process in the proposed rule, and argued that by providing communities with an "official bulletin board" from which to solicit advanced service providers, the community can identify its unique needs and aggregate purchasing power to entice prospective providers. Representative Hawley compared this phase to a Request for Proposal that is not limited by the criteria for a BFRR, as the commission simply facilitates a match between a community and a potential provider, with the terms of the contract being worked out by the respective parties. Representative Hawley strongly encouraged the commission to commit a full time employee to expediting high-speed Internet access for all communities, and to work closely with the Office of Rural Community Affairs and other agencies to make sure no funding streams or leveraging opportunities are overlooked.

Likewise, XO and TWTC pointed out that the proposed rule provides rural retail customers with a competitive process through which to seek the provision of advanced services. XO and TWTC

expressed their support for the inclusion of the competitive process in the proposed rule. Specifically, XO and TWTC support subsection (e) of the rule which provides a mechanism for rural retail customers to request a competitive response for the provision of advanced services by submitting a request to the commission for posting on the commission's website, including the notification of all carriers. XO and TWTC commented that the rule's competitive process benefits the goal of creating opportunities in the competitive market to provide advanced services solutions. The State also expressed support for the rule's flexibility and openness in this regard.

TCTA commented that the proposed rule would accomplish two objectives that are important in any effort to expand the availability of advanced services. First, the proposed rule recognizes that a variety of technologies exist and that the technical means and economics of providing advanced services are continually evolving. By not presuming that any particular means of delivering these services will suit all communities, no technology is advantaged or disadvantaged. Second, the process of posing information on the commission's website creates an open process under which communities and providers have an opportunity to explore options. According to TCTA, by making community desires for advanced services more widely known, the rule would give the marketplace an improved chance to work.

The commission agrees with these comments and will work to ensure that the rule is effectively implemented for all providers, that the competitive response process is utilized, and that opportunities are coordinated. The commission has a team of employees who work on advanced services issues. Upon adoption of this rule, the commission will provide a staff member as the

contact person for communities seeking to utilize the competitive response and BFRR processes. This staff person will be available to answer community questions about the advanced services' processes. In addition, the team will work with other state agencies, as appropriate, to facilitate broad-based deployment of advanced services.

The commission also recognizes the complexity of advanced services deployment and adopts this section to accommodate the competing and difficult interests involved. The commission finds that promoting market solutions in the first instance is ultimately the best solution for customers in Texas. The rule allows for customers and advanced services providers to reach a mutually agreed resolution that promotes economic and technological sustainability. Consequently, the commission agrees with the comments and adopts this section to allow a competitive forum for all retail customers in rural areas to seek advanced services from any advanced services provider. As Representative Danburg observed, the competitive response process allows a competitively neutral mechanism to encourage creative solutions for communities that have a need for services. And, as Representative Hawley mentioned, the commission will facilitate a match between a community and a potential provider to bring a market solution for the community. The terms of the contract, however, will be worked out by the respective parties. The competitive response process is adopted because it will foster communication between companies and communities so that they may consider and implement the myriad solutions that may be available. Further, the process will provide all parties flexibility and customization in provisioning. As communities, technologies, and Internet content advances, the competitive process will adapt with market changes. Only after this competitive response, market approach fails will a BFRR process be necessary so that retail

customers in a rural area may secure access to services that are reasonably comparable to the advanced telecommunications services offered by companies within urban service areas.

Verizon contended, however, that as a threshold matter PURA §55.014 and this section are preempted by federal law because they attempt to regulate interstate telecommunications services, as retail services that provide high-speed access to the Internet – such as digital subscriber line service – are interstate services, and therefore, cannot be regulated by the state. Verizon argued that the statute and its implementing rules cannot require Verizon to deploy interstate services under any condition.

The commission rejects Verizon's claims and adopts this section after carefully balancing the tensions inherent when promoting statewide rural deployment. The commission finds that it does have authority to adopt the rule. As noted in subsection (a) of the rule, PURA §51.001(g) outlines the guiding principle of this state regarding deployment: it is the policy of this state to ensure that customers in all regions of this state have access to advanced telecommunications services that are reasonably comparable to those services provided in urban areas. PURA §55.014(g) specifically provides the commission with all jurisdiction to enforce the statute with regard to the provision of advanced services. Notwithstanding these statutory provisions, the commission points out that the rule itself does not mandate that an advanced services provider deploy any particular technology in response to a request for service, and it allows for great flexibility in the provision of any service. The section also provides for significant protections for economic sustainability of the service in the prices, terms, and conditions that a company

may require of rural customers. The commission finds that the rule adequately addresses the jurisdictional concerns raised by Verizon.

Preamble Questions

In the proposed rule published in the November 9, 2001 *Texas Register*, the commission sought comment on three items. The first two questions posed by the commission are inter-related but distinct. The first asked for comment on the appropriate number of lines of service necessary for a BFRR under subsection (f)(2)(A) of the rule and how or why that number is appropriate or essential. The second sought comment on the economic relationship between the required number of lines for service and the standards for a reasonably comparable price, term, and condition for service, including the 140% rebuttable presumption on price and the availability of a contract term commitment.

Commissioner Susan Combs, Representative Hawley, and the State all argued that a strict requirement for 150 lines of service in a BFRR is neither realistic nor appropriate for all rural areas. The number of lines, they contended, should be lower than 150. The State does not believe that threshold numbers of customer requests or cost studies should be used as the basis for deciding that a bona fide request has been made. The State pointed out that the statute does not provide for cost studies to establish the profitability of service prior to the acceptance of a BFRR. The State suggested that a single request for service should be sufficient to trigger the provisioning requirements of the statute, provided the following five conditions are met: (1) there is a written record of a request; (2) the customer agrees to a contract for a minimum term; (3) the

reasonably comparable service is technologically flexible; (4) a customer has the right to a complaint procedure at the commission; and (5) subsequent customers in the same rural exchange would have the right to the provisioning of the same service.

Commissioner Combs expressed that the minimum number of lines included in the BFRR should be reduced from 150 to 75, which, the Commissioner argued, is a more realistic number for smaller rural areas to meet. Commissioner Combs contended that the requirement of 150 lines for service might result in some rural areas being unable to even apply because the population density simply cannot satisfy the requirement. Commissioner Combs stated that the numerical change should be made in both subsection (f)(2)(A) and (f)(4)(B) of the rule.

Representative Hawley suggested adding language to subsection (f)(2), which details the components of a BFRR, to state clearly that the commission may make exceptions to these provisions for good cause. This would, according to Representative Hawley, allow the commission flexibility in determining when a request is a BFRR. Representative Hawley explained that the commission could find that a request is a BFRR even though it has fewer than 150 line requests which would create a process that is more realistic for many rural areas.

AT&T, SWBT, TCTA, and Verizon contended that the requirement of 150 lines for service for a BFRR is appropriate and essential for the success of rural advanced services deployment.

AT&T maintained that subsection (f)(2)(A), regarding the appropriate number of service lines for a BFRR request, should recognize current and future economic realities to avoid disincanting

telecommunications providers from providing basic local service in rural areas or advanced telecommunications services in urban areas. AT&T stated that the minimum number of service lines threshold recognizes that customer concentrations are necessary to support deployment of advanced services. AT&T contended that 150 (generic) digital subscriber line (xDSL) service lines may provide the economic support necessary to deploy xDSL service in rural areas. However, due to varying situations within the state, AT&T argued that 150 xDSL service lines may not always be sufficient to support economically reasonable deployment. AT&T claimed subsection (e), regarding the proposed rule's competitive response process, allows potential customers representing fewer than 150 lines of service that are willing to pay a premium price for advanced service to make their desire known to a broad audience of potential providers. Therefore, AT&T maintained that the commission should not decrease the minimum of 150 lines of service that would be required to initiate the BFRR process.

Although SWBT supported the 150 number for the BFRR requirement, SWBT proposed that the BFRR in subsection (f)(2)(A) be stated in terms of "customers" not "lines for service" because the BFRR should reflect actual retail customers. The State disagreed with SWBT's proposal that the rule be amended to refer to number of customers, rather than number of lines. The State claimed that there is no economic difference between one customer ordering 150 lines and 150 customers ordering the same number of lines.

SWBT added that the 150 minimum number of service lines for a BFRR in the rule should be adopted. The 150 number is supported by SWBT's study into advanced services deployment. In fact, SWBT contended that the record would support a much higher number for an economic

"break even." The 150 number recognizes that the statute is not a "deploy-at-any-cost" law, but should take into account competitive, legal, technical, and policy issues. For example, SWBT stated that wireline advanced services deployment to small numbers in a typical rural environment is not economical; thus, a non-wireline technology is the probable means for carrier deployment. Any reduction in the number of required customers will reduce the likelihood of any broadly deployed wireline solution to remain available and scalable after the original demand is met. Notwithstanding the propriety of the 150 lines of service requirement, SWBT contended that customers are also well protected by an additional element in the rule: the "competitive response" in subsection (e). This mechanism will promote deployment for smaller groups of customers and mitigates any concern over the 150-line threshold.

As evidence of the need for the 150-line minimum, SWBT stated that its study data supports a BFRR number significantly higher than 150. SWBT explained that it examined 69 offices in SWBT's five-state territory where no asymmetric digital subscriber line (ADSL) equipment has been deployed. The sampled offices required facilities, Internet service provider (ISP) connectivity, land, building and equipment for wireline ADSL deployment. SWBT applied these percentages to its Texas offices where no ADSL is deployed. The study used capital and expense deployment estimates and historical data; it did not consider ubiquitous deployment in the wire center or rural area; the analysis approximated cost of the digital subscriber line access multiplexer (DSLAM) and call transport to ISP; and assumed a \$70 per month subscriber cost and five year "payback" period. According to SWBT, the costs associated with wireline deployment include: support costs (network management tools and labor); land, building, and

collocation costs; interoffice transport costs; additional fiber costs; and supporting network capital costs.

SWBT stated that the "average" rural Texas deployment would require more than 350 subscribers over a five-year period to obtain an economic "break-even." SWBT estimated that it would require between 100 and 2000 subscribers for an economic "break even" depending on the percentage of deployments.

TCTA expressed support for a threshold level of customer demand to trigger the obligation of a company subject to the statute to provide service under the rule.

Verizon contended that the provision of 150 lines to begin the BFRR process, as set forth in subsection (f)(2)(A), is a reasonable number of lines, because although it is likely that rural communities will need to commit to a significantly greater number of lines to obtain a price within 140% of the price in urban areas, companies will negotiate such matters after a BFRR is made.

The commission adopts the rule, particularly subsection (f)(2)(A), with a requirement that a BFRR contain a request for 150 lines for service. The commission agrees with the telecommunications providers that economic viability must be taken into account because the general cost for service in rural areas is greater and more varied than in urban areas. As evidenced by the companies' comments, many rural areas of this state would require a significant number of lines or customers to support an economically viable advanced services deployment. And, such viability may occur only after a period of years. The commission seeks to balance the

requirements of the statute with the realities of rural Texas, not least of these that rural Texas differs greatly from one region to another. There are significant variables to consider when examining the appropriate number of lines for a BFRR. These include: population density, distance, terrain, technology, and current carrier deployment and presence. While 150 lines may prove too large an obstacle for some rural areas to develop, it may not for other communities. One hundred-fifty may, in fact, represent a small percentage of total lines in a particular community. Furthermore, as explained by several Commenters, the rule balances the 150-line requirement with the competitive response process in subsection (e). This process will allow any rural area with a forum to solicit offers for deployment. In fact, this process will offer exposure to myriad technologies and possibilities that the rural area may not have considered. The forum will enhance an open marketplace. Consequently, the commission declines to adopt the proposals to decrease the number of lines for service required for a BFRR. While the statute does not expressly require a cost analysis or a line of service requirement for a BFRR, the statute does not define a BFRR either. The commission finds that a line requirement serves to implement the statute given its structure and meaning. Likewise, the commission does not specifically adopt a provision in the rule to allow for exceptions to the 150 lines of service requirement. A rural area may utilize the competitive response process even if not meeting the requirement of a BFRR. The commission would point out that §26.3 of this title (relating to Severability Clause) applies to this rule. The commission, pursuant to §26.3, may make an exception to any substantive telecommunications rule for good cause. Therefore, if the competitive response process does not result in a rural area receiving service and that area's request does not meet the 150 lines of service requirement, the commission may, without specifically providing so in the rule, grant a good cause exception when appropriately

established. The commission also rejects SWBT's request to modify the lines of service to instead reflect 150 different customers. The commission agrees with the State that there is no economic difference between one customer ordering 150 lines and 150 customers ordering the same number of lines.

Next, the commission examines the economic relationship between the required number of lines for services and the standards for a reasonably comparable price, term, and condition for service. AT&T, SWBT, the State, and Verizon provided statements on this portion of the rule to reference their general support for the 140% rebuttable presumption in the rule for a reasonably comparable price in a rural area.

AT&T maintained that the proposed rule should recognize differences in cost between providing services to urban and rural customers. AT&T stated that the proposed rule should recognize that differences in technology used in deploying advanced services in rural areas could result in different rates, terms, and conditions than comparable services within urban areas. AT&T contended that the 140% rebuttable presumption establishes a "safe harbor" to prevent providers from seeking a commission waiver for any price differentials. AT&T maintained that there is no prohibition against a potential provider demonstrating that additional lines of service would need to be provisioned in order to maintain a retail price within the safe harbor. Moreover, AT&T claimed that there is no prohibition against a potential provider demonstrating that higher retail prices would be required to provide an advanced service to only the requesting customers. AT&T stated that the 140% rebuttable presumption allows a customer to challenge any price differential, while allowing a provider to request an additional price differential if appropriate.

AT&T contended that PURA §55.014 does not require a provider to provision an advanced service in a rural area that has the *same* prices, terms, and conditions of services that exist in urban areas.

SWBT maintained that rural advanced services deployment is significantly more expensive and risky than in urban areas. The rebuttable 140% presumption factor in the proposed rule is well justified. A rule without the 140% rebuttable presumption could force a carrier to offer a retail service at a cost below the resale price. A carrier must not be compelled to offer a service at a loss for an extended period of time. The 140% rebuttable presumption represents a reasonable balance between pricing and deployment costs. SWBT advanced three primary reasons for its support. First, the 140% factor was utilized in several bills of the 77th Texas Legislature, including CSSB 1783, which did not pass. Second, the factor provides market and economic certainty for carrier deployment and marketing because any challenge to the pricing will be resolved in the carrier Selection Proceeding under §26.143(f)(4). Third, the rebuttable presumption allows use of multiple or substitutable technologies. For example, an urban ADSL offering at \$50 per month would be reasonably comparable to a rural satellite offering for \$70 a month.

The State expressed support of the rebuttable presumption that a rural price is reasonably comparable to a similar urban service if the rural price is within 140% of the urban price. The state stressed, however, that the 140% threshold should not be seen as a license to gouge rural customers if the price to serve is lower. As the rule will allow, affected persons should be allowed to rebut the proposed price if it can be proven to actually be lower.

Verizon stated that with the 140% rebuttal presumption in the rule, a carrier should still be allowed the opportunity to show that its deployment costs are actually greater. Verizon argued that carriers should be allowed to recover all their costs. Verizon cited PURA §60.101(3) and Federal Telecommunications Act (FTA) §254(k) and argued that subsection (d)(2)(A)(iii), allowing a carrier to rebut the 140% presumption by showing that a higher price is necessary to recover its reasonable cost, should be retained to give companies the opportunity to recover all their costs of providing a mandated service. Verizon asserted that once a BFRR is made, the affected companies must file a written response with estimated prices, which will depend in part on the capital costs and expenses for the project, the number of lines requested, the number of lines capable of being served, and whether end-users will commit to a specific term. Verizon proposed a scenario in which a community must commit to 1,000 lines for service to get the cost down to within 140% of the price in an urban area, and argued that, if the rural community cannot get 1,000 lines to commit for service, it must decide whether to forego service or pay a significantly higher price with longer term commitments.

The commission finds that to be presumed "reasonably comparable," the rural price for an advanced service must be within 140% of the price for similar advanced services in the company's proximate urban areas. This scheme is reasonable and justified given the lines of service required for a BFRR and other terms that a company may require of rural customers. The commission recognizes that deployment costs will vary between different rural areas and will depend largely on the technology utilized and the number of lines served. Because a telecommunications provider would be assured 150 lines for service should they be selected to

provision advanced services after a BFRR, the company could also provide a service economically within the 140% urban differential. The commission finds that subsection (d)(2)(A)(i), therefore, allows companies to recover their costs of providing service. Significant to this finding is the additional provision in subsection (d)(2)(A)(iii) that permits a company to charge a monthly retail price that is higher than the 140% of an urban price if the company shows that a higher price is necessary to recover its reasonable costs in providing the service. Additionally, the rule allows the company to require a contractual term commitment for service. Within this framework, the commission will also take into account the distance, terrain, and features of the rural area when determining whether a rural price, term, or condition is reasonably comparable. Thus, even though companies may contend that the minimum number for a BFRR should be higher than 150, the commission finds that the relationship of the number of lines in conjunction with the price, terms, and conditions allowed for rural customers justifies the balance reached in the rule. The commission likewise finds that the rule adequately affords rural customers reasonable terms for service. Although a rural area must commit 150 lines of service, the customers are allowed to show that a reasonably comparable price is below the 140% threshold presumed by the rule. If a rural area can establish that a company will recover its reasonable costs in providing the service, the community may show that a price lower than 140% of an urban price is justified. And, again, if the 150 lines for service is not practical for a particular rural area, the community may utilize the competitive response process.

Lastly, the commission elicited statements on the benefits to be gained by the rule. Commissioner Combs commented that while there are many variables which impact the ability to deliver advanced services in rural areas, including the cost of upgrading existing equipment

and proximity of the telecommunications provider to an Internet service provider, the commission should consider the positive benefits to be derived from high speed access for rural areas, including new opportunities for e-commerce and improved access to public and private services. Representative Hawley stressed that deployment of advanced services is crucial to the economic vitality of the less populated areas of the state.

The commission agrees with these comments and recognizes that there may be a sustained effect on the local economy of rural areas which have access to advanced services. Advanced services provided under this section would allow customers in rural areas to access the Internet more quickly and more efficiently than is currently the case. Rural areas may experience economic benefits from advanced services through increased attraction of business and resident location within the area. Additionally, existing or emerging businesses in rural areas will have the opportunity to request advanced services. Receipt and use of advanced services may provide these businesses with the ability to acquire remote business practices, create a larger customer base, or generate greater levels of financial performance through e-commerce. These economic benefits may in turn lead to increased employment in the rural areas. Advanced services providers may employ additional personnel in the rural area for management and maintenance; small businesses may create new jobs due to the need for technical assistance or because of opportunities that are only possible through Internet transactions; and businesses may increase productivity or customers due to greater demand for their goods and services. Likewise, new business enterprises may create added workforce prospects because of the options generated through increased connectivity to the Internet. The extent of these benefits will vary greatly across the state and will depend on the population and technical ability of the population in the

rural area, the number of retail lines requested, the number of customers seeking service, and the types of service provided.

Other Specific Comments to Rule Language

Subsection (d) supplies the requirements for providing an advanced service by telecommunications providers after a BFRR. Subsection (d)(1) specifically outlines when a company is subject to the rule's BFRR process and under what conditions it must provision an advanced service and under what conditions the company would not be required to provision service.

Verizon asserted that subsection (d)(1)(A) should be clarified to reflect that a company is not obligated to deploy an advanced service in rural areas unless it offers that service to its "qualified customers" in *all* urban areas. "Qualified customers," Verizon contended, should mean those customers capable of receiving advanced services using the company's existing facilities. Verizon additionally maintained that a company should be permitted to complete its roll-out of services in its urban markets before it is required to offer them in rural markets, and that the purpose of the legislation was to ensure that rural communities can obtain services generally available in urban communities, not to frustrate deployment of new services in urban areas by imposing rural build-out requirements on the company as soon as it offers a new service.

The commission rejects Verizon's suggested change to the rule. While the commission agrees that the rule should not frustrate new deployment in urban areas, the commission also recognizes

the need for increased deployment to all Texans. As noted in subsection (a), PURA §51.001(g) outlines, in relevant part, the guiding principle of this state regarding deployment: it is the policy of this state to ensure that customers in all regions of this state have access to advanced telecommunications services that are reasonably comparable to those services provided in urban areas. The commission finds that the benefits associated with the application of this rule far outweigh any potentially unintended consequences that might discourage urban development. The commission adopts this rule after carefully balancing the tensions between promoting deployment and discouraging prospective investment. The commission finds that the rule harmonizes these interests in such a way to foster market competition and to meet customer demand in rural areas. The rule requires a minimum threshold of lines of service for a BFRR. Additionally, the rule provides for specific, significant elements for carrier price, terms, and conditions that allow a company to reap an economic return in its rural deployment investment. Thus, the commission finds that urban customers will not be disadvantaged by the implementation of this rule. The commission further finds that a company that provides advanced telecommunications services within its urban areas is obligated to provide advanced services under the statute and the rule even when the company does not offer advanced services in all of its urban areas.

Subsections (d)(1)(B) and (f)(2)(A) provide that the lines for service in a BFRR and subsequent requests for service must be located within 14,000 26-gauge cable feet or its equivalent of the same central office in a rural area. Commissioner Combs urged the commission to re-examine the 14,000-foot limit from the central office, as the distance is so calibrated as to exclude those customer farther out of the town center.

The commission adopts a 14,000 26-gauge cable feet or its equivalent as the proper distance for a customer in a BFRR. This distance recognizes the technological and deployment limitations of the advanced services generally offered by the companies obligated to provide services under the rule. This distance should also be viewed in light of the area encompassing a "rural area" which is comparatively large. Moreover, any rural area customers not within 14,000 feet distance may utilize the competitive response process to obtain advanced services. Finally, the distance limitation also provides certainty for a company in meeting its obligations once it is selected to provide service to a rural area. The company will have adequate notice of the customers to which it is obligated to serve, be they from the original BFRR or from subsequent requests in the same BFRR area.

Subsection (d)(1)(D) states that a company shall not be required to provide advanced services if an advanced services provider is already providing service to the rural area. Subsection (d)(1)(D)(i) - (v) outline the specific criteria that the commission shall consider when determining if another provider is already providing advanced services in the rural area.

Verizon argued that subsection (d)(1)(D)(i)-(v) should be deleted because these provisions reverse an exception to the general rule requiring deployment of advanced services in rural areas by allowing the possibility of requiring a company to offer services in an area even if another company is already providing advanced services in the rural area.

TCTA expressed its support for relieving a company from providing service if the requesting community is already served by another provider.

In its reply comments, TCTA disagreed with Verizon that the commission should delete the portion of the rule that sets out the specific tests for determining whether an existing provider already serves a community. It stressed that, without these criteria, communities that want advanced services will not know what the commission will consider "already being served." Also, without these tests, a provider that is already serving the community may find itself needlessly drawn into the BFRR case at the commission. As a practical matter, TCTA contended, if the commission does not define what constitutes the presence of an existing provider in the rule, the issue will be left open for future debate, briefing of issues, and potential discovery disputes.

The commission rejects Verizon's suggestion to delete the criteria listed in subsection (d)(1)(D)(i)-(v). The commission does not find that the criteria eviscerates the exemption to serve a rural area if a provider is already serving the rural area. The opposite is the case. The criteria merely outline what elements may establish the exception. The specific listing gives needed guidance to companies, communities, and the commission.

Subsection (d)(1)(E) provides that a company shall not be required to provide advanced services if no Internet service provider is providing or commits to provide Internet connectivity in the rural area that is compatible with a company's deployed service. Representative Hawley suggested the following language for subsection (d)(1)(E): "The absence of an Internet service

provider is a factor to be considered, but not necessarily an exception to requiring a company to provide advanced services in a rural area."

TCTA expressed its support for subsection (d)(1)(E).

The commission agrees with Representative Hawley's suggested change and replaces the language for subsection (d)(1)(E). By providing that the absence of an ISP is a factor to be considered when requiring a company to provide an advanced service, the commission will have the flexibility to consider the circumstances surrounding deployment of advanced services in a particular rural area.

Subsection (d)(2)(A) provides that under a BFRR, a company's rural price for service is presumed to be reasonably comparable if it is within 140% of the monthly retail price of the advanced telecommunications service offered in the same company's proximate urban service area. Subsection (d)(2)(A)(iii) and (iv) allow a company or interested person to rebut the presumption if the party can show that the company's reasonable costs in providing the service are actually higher or lower than the price that falls within the 140% "safe harbor."

AT&T argued that subsection (d)(2)(A) should state that any challenge to the 140% rebuttable presumption must be raised and resolved during the commission selection proceeding described in subsection (f)(4). AT&T stated that granting a challenge to a provider's pricing structure at a later date could result in investments for which no return may ever be realized. SWBT, in its

reply comments, agreed with AT&T regarding the challenge to the company offered pricing in response to a BFRR.

The commission agrees with AT&T's comment and adds new subsection (d)(2)(A)(v) to provide that a challenge to the presumption must be made during the commission Selection Proceeding under subsection (f)(4) after notification of the BFRR. Further, the commission agrees that the company's price for service to rural customers should be resolved during the commission Selection Proceeding.

Verizon asserted that subsection (d)(2)(A)(iv) should be eliminated because parties should not be allowed to challenge a price that satisfies the 140% threshold. Verizon maintained that the purpose of the legislation is to provide a safety net under which rural areas can receive advanced services if no one is willing to provide such services voluntarily, not to subject companies to price regulation. Verizon cited PURA §60.101(b)(3) and FTA §254(k) in support of its position that in adopting a pricing rule, the commission shall require that each service recover the appropriate costs of each facility and function used to provide the service. On the other hand, Verizon maintained that subsection (d)(2)(A)(iii) should be retained to give companies the opportunity to recover all their costs of providing a mandated service.

The State countered that affected persons should be allowed to rebut a company's proposed price if it can be proven to be lower.

The commission rejects Verizon's call to delete subsection (d)(2)(A)(iii). First, the 140% price term merely allows a company to presumptively establish that its rural price is reasonably comparable to its urban price. The provision provides a "safe harbor" for a company to show its compliance with the statute. Second, the provision Verizon seeks to delete does not allow reduction in a company's price below its reasonable costs for providing service. On the contrary, the rule expressly states that to rebut the rule's presumption, an interested person must show that a lower price will allow a company to recover its reasonable costs in providing service. The rule does not prohibit a company from recovering its appropriate costs of each facility and function used to provide the advanced service.

Subsection (d)(2)(B) outlines the requirements for establishing that a rural term and condition for service are reasonably comparable to a company's urban service. Verizon argued that even in urban areas, a large percentage of customers cannot obtain certain types of advanced service because of technical limitations and that those technical limitations may be exacerbated in rural areas. Therefore, Verizon supported subsection (d)(2)(B).

The commission concurs and retains subsection (d)(2)(B) in the rule.

Subsection (f) outlines the BFRR process, including the requirements for a BFRR and the commission proceedings applicable to the BFRR.

XO and TWTC expressed their support for the notification requirements contained in subsection (f)(3), which requires the commission to notify all companies electing under PURA Chapter 58

and all SPCOA and COA holders when the commission has determined that a request is a BFRR and to post such information on the commission's website. XO and TWTC stated that this process benefits the goal of creating opportunities in the competitive market to provide solutions for advanced services deployment.

AT&T argued that subsection (f)(4)(A)(i) should clarify the level of detail required for a company proposal in a commission Selection Proceeding. AT&T stated that non-incumbent local exchange carriers that serve rural customers through resale or unbundled network element platform may have very limited or no detailed information relating to the network in place that would significantly impact their ability to provide an advanced service. The non-ILEC company may not be able to gain access to such information. Specifically, AT&T recommended that the commission clarify that the rule is flexible for a non-ILEC submitting a proposal and is not intended to be unduly burdensome.

After notification of a BFRR is published, subsection (f)(4)(A) requires each company subject to the rule for the rural area seeking advanced services to submit a proposal for provision of one or more advanced services to the retail customer(s) seeking service. The commission agrees with AT&T that the rule allows for company flexibility in developing a proposal. The rule merely provides that the proposal must evidence compliance with the requirements of subsection (d) regarding the provision of advanced services. While the proposal, at a minimum, must comport with these provisions, the rule does not specifically govern what the proposal must additionally contain. The commission finds that this flexible approach is appropriate given the technological complexities involved in advanced services deployment and the ever-changing methods by

which to provide the services. The commission also recognizes that proposals by different companies will vary based upon the extent of the company's presence in the rural area, how the company provides service to the area, and the characteristics of the rural area. For example, the commission would not anticipate a cost-study proposal, detailing how the company would build out facilities, from a submitting company that simply provides local service through the purchase of unbundled network element platform from the underlying carrier in the rural area making a BFRR. The commission merely expects a detailed outline of how the company would comply with the rule and provide advanced services to the rural area. Because the commission will examine the proposals in order to select a provider for the rural area, the company should make its best case for provision of service given its resources and presence in the rural area. The commission would also require sufficient information to establish the propriety of a company's 140% price differential. The company submitting a proposal should also look to the factors under subsection (f)(4)(D) to determine what elements are expected in the proposal. The commission finds that the rule sufficiently addresses the requirements for a company proposal and declines to further clarify the detail of the required proposal.

Subsection (f)(4)(D) contains the criteria that the commission may deem relevant when selecting a company proposal. AT&T supported these criteria because they will assist the commission to evaluate a variety of fundamental market and regulatory issues relevant to the rational and economically practical deployment of advanced services. AT&T contended, however, that proposed subsection (f)(4)(D)(viii) should recognize the costs that a company providing local exchange service through resale or UNE-P would incur if it were able to purchase advanced services through resale or UNE-P in rural areas. AT&T contended that the mere availability of

advanced services to a competitive provider through resale or unbundled network element platform is almost meaningless without simultaneous consideration of the economic practicality of obtaining the services in that manner and then being able to provide those services to end use customers at a reasonable price.

The commission declines to add the element AT&T suggested for subsection (f)(4)(D)(viii). While the commission appreciates AT&T's concern, the commission finds that the concern is implicitly addressed within the criteria itself. By considering whether a company can purchase the advanced services through resale or unbundled network element platform, the commission will naturally consider all of the attendant circumstances that flow from this situation. Additionally, the listed factors are a non-exclusive inventory of the many possible criteria that may be relevant when selecting a company to serve a rural area. Each BFRR will be distinct and require differing amounts of inquiry of various factors. The commission may examine any other factors the company raises in its proposal.

All comments, including any not specifically referenced herein, were fully considered by the commission. Additionally the commission changes the word "alternative" in the definitions of advanced telecommunications services and advanced services in subsection (c)(2) and (3) to "opposite" in order to enhance the understanding of the commission's intent and to more accurately reflect the term's meaning. The change is not intended to create any substantive alteration to the term's applicability or denotation.

This section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2002) (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, including rules of practice and procedure. Additionally, PURA §55.014(g) specifically provides the commission with all jurisdiction necessary to enforce PURA §55.014 regarding the provision of advanced services within rural service areas in Texas.

Cross Reference to Statutes: Public Utility Regulatory Act, Utilities Code §§14.002, 51.001(g) and 55.014.

§26.143. Provision of Advanced Services in Rural Areas.

- (a) **Purpose.** The purpose of this section is to implement Public Utility Regulatory Act (PURA) §55.014 regarding the provision of advanced services to facilitate connection of end users to the Internet. This section is also intended to promote the policy, pursuant to PURA §51.001(g), that customers in all regions of this state have access to advanced telecommunications and information services.
- (b) **Application.** This section applies to a company electing under PURA Chapter 58 or a company that holds a certificate of operating authority (COA) or service provider certificate of operating authority (SPCOA).
- (c) **Definitions.** The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.
- (1) **Advanced services provider** — Any entity that offers or deploys advanced services, such as a holder of a certificate of convenience and necessity, a COA, a SPCOA, a cable company, a fixed wireless company, a satellite company, or any other provider of an advanced service.
- (2) **Advanced telecommunications services** — Any retail telecommunications services that, regardless of transmission medium or technology, are capable of originating and receiving data transmissions for the purpose of accessing the Internet with a speed of at least 200 kilobits per second in the last mile in one

direction and with a speed of at least 128 kilobits a second in the last mile in the opposite direction.

- (3) **Advanced services** — Any retail services that, regardless of transmission medium or technology, are capable of originating and receiving data transmissions for the purpose of accessing the Internet with a speed of at least 200 kilobits per second in the last mile in one direction and with a speed of at least 128 kilobits a second in the last mile in the opposite direction. An advanced service includes any advanced telecommunications service.
- (4) **Company** — A telecommunications utility electing under PURA Chapter 58 or an entity that holds a COA or a SPCOA that provides advanced telecommunications services in urban areas of this state and provides local exchange telephone services in a rural area seeking provision of advanced services.
- (5) **Reasonably comparable or similar services** — Any services that meet the definition of an advanced service. Each advanced service is substitutable for any other advanced service.
- (6) **Rural area or rural service area** — Any community located in a county not included within any Metropolitan Statistical Area (MSA) boundary, as defined by the United States Office of Management and Budget, and any community within an MSA with a population of 20,000 or fewer not adjacent to the primary MSA city.
- (7) **Urban area or urban service area** — A municipality in this state with a population of more than 190,000.

(d) **Provision of advanced services.**

(1) **Requirement to provide an advanced service.**

(A) A company that provides advanced telecommunications services within the company's urban service areas shall, on a Bona Fide Retail Request for service, provide in rural areas served by the company advanced services that are reasonably comparable to the advanced telecommunications services provided in urban areas. The company shall provide such advanced services to the retail customer(s) seeking service through a Bona Fide Retail Request determined by the commission under this section:

- (i) at reasonably comparable prices, terms, and conditions to the prices, terms, and conditions for similar advanced telecommunications services provided by the company in proximate urban areas; and
- (ii) within 15 months after notice of the Bona Fide Retail Request for those services is published in the *Texas Register*.

(B) A company that provides advanced services in a rural area pursuant to a Bona Fide Retail Request shall provide advanced services to any subsequent retail customer(s) located within 14,000 26-gauge cable feet or its equivalent of the same central office as determined for the original Bona Fide Retail Request under this section:

- (i) at reasonably comparable prices, terms, and conditions to the prices, terms and conditions for similar advanced services provided by the company in proximate urban areas; and
 - (ii) within a reasonably comparable period of time as the period of time a company provides advanced telecommunications services to the company's subsequent retail advanced services customers located in proximate urban areas.
- (C) A company meets the requirement of providing a reasonably comparable advanced service if the company has provided the requested or a reasonably comparable advanced service in accordance with this section either:
 - (i) directly; or
 - (ii) through a business arrangement with an advanced services provider.
- (D) A company shall not be required to provide advanced services in a rural area when an advanced services provider is already providing advanced services in the rural area seeking an advanced service at the time of the Bona Fide Retail Request or within 15 months after notice of the Bona Fide Retail Request is published in the *Texas Register*. When determining if another provider is already providing an advanced service in a rural area, the commission shall, with information available to the public, consider:

- (i) whether an advanced services provider is actively marketing an advanced service in the rural area;
 - (ii) whether an advanced services provider is offering, directly or indirectly, installation and repair services for facilities and equipment necessary for the provision of the advanced service;
 - (iii) whether customers in the rural area are able to receive installation and repair services necessary for facilities and equipment;
 - (iv) whether the price of installation and repair services are reasonably comparable to prices in proximate urban areas; and
 - (v) whether an advanced services provider or distributor is located within or near the rural area.
- (E) The absence of an Internet service provider is a factor to be considered, but necessarily an exception, when requiring a company to provide advanced services in a rural area.
- (F) This section may not be construed to require a company to:
- (i) begin providing services in a rural area in which the company does not provide local exchange telephone service;
 - (ii) provide advanced services in a rural area of this state unless the company provides advanced telecommunications services in urban areas of this state; or
 - (iii) provide a specific advanced service or technology in a rural area.
- (2) **Reasonably comparable price, terms, and conditions.** Advanced services provided by a company to a rural area pursuant to paragraph (1) of this subsection

must be provided at prices, terms, and conditions that are reasonably comparable to the prices, terms, and conditions for similar advanced telecommunications services provided by the company in proximate urban areas.

(A) Reasonably comparable prices.

- (i) If a monthly retail price for an advanced service is within 140% of the monthly retail price of the advanced telecommunications service offered in the same company's proximate urban service area, there shall be a rebuttable presumption that the price is reasonably comparable. A promotional rate for an advanced telecommunications service shall not be considered a monthly retail price if it is offered for less than four months.
- (ii) When considering whether a price is reasonably comparable, the commission shall consider the distance, terrain, and features of the rural area seeking the advanced service.
- (iii) A company may rebut the 140% presumption by showing that a higher price is necessary to recover its reasonable costs in providing the advanced service.
- (iv) Any interested person may rebut the 140% presumption by showing that a lower price will allow a company to recover its reasonable costs in providing the advanced service.
- (v) Any company or interested person seeking to rebut the 140% presumption by showing that a higher or lower price is warranted must do so during the Commission Selection Proceeding under

subsection (f)(4) of this section. Any dispute regarding a company's reasonably comparable price must be resolved during the Commission Selection Proceeding under subsection (f)(4) of this section.

(B) Reasonably comparable terms and conditions.

(i) Reasonably comparable terms and conditions are those terms and conditions applicable to the provision of advanced services in a rural area that are similar to the terms and conditions for advanced telecommunications services provided by the same company in proximate urban areas.

(ii) A company may require a term commitment for all persons seeking advanced services under a Bona Fide Retail Request. When considering whether a term commitment is reasonably comparable, the commission shall consider the distance, terrain, and features of the rural area seeking the advanced service.

(e) **Requesting competitive response for provision of advanced services.** A person(s) in a rural area seeking provision of an advanced service shall first submit a request for a competitive response for provision of those services. The request need not conform to the requirements of a Bona Fide Retail Request unless the requesting person(s) intends to seek provision of an advanced service under the Bona Fide Retail Request process in subsection (f) of this section.

(1) **Requesting advanced services.**

- (A) Any person(s) in a rural area seeking the provision of advanced services shall submit a written request to the commission for posting on the commission website.
 - (B) The written request must include the name, address, and telephone number of a contact person.
 - (C) Within five working days after receipt, the commission shall post the request for advanced services on the commission's website.
 - (D) The commission shall post on the commission website:
 - (i) the name, address, and telephone number of the contact person;
 - (ii) the number of lines requested;
 - (iii) the number of customers requesting service;
 - (iv) the location of the rural area seeking the advanced service; and
 - (v) any other information the commission deems relevant.
- (2) **Competitive response.**
- (A) After posting on the website, any company or advanced service provider may submit to the contact person a proposal to provide advanced services to the person(s) seeking advanced services.
 - (B) Proposals must be submitted to the contact person within 50 days after the request was posted and provide for deployment of the advanced service within 15 months after the request was posted by the commission.
 - (C) The person(s) seeking advanced services may negotiate with and select a provider based upon all of the proposals received.

(D) If no advanced services provider has committed to provide advanced services to the person(s) submitting a request within 60 days after the request was posted by the commission, the contact person shall notify the commission. Upon notification, the contact person may ask that the commission establish a proceeding to determine that the request is a Bona Fide Retail Request.

(f) **Bona Fide Retail Request process.**

(1) **Commission proceeding to determine a Bona Fide Retail Request.**

(A) Upon request under subsection (e)(2)(D) of this section, the commission shall determine whether a request is a Bona Fide Retail Request. This request may be processed administratively.

(B) Any interested person may present written comments or objections, setting forth the basis of any facts in dispute, regarding whether the request is a Bona Fide Retail Request under this section.

(2) **Bona Fide Retail Request.** A Bona Fide Retail Request must:

(A) include a written request for at least 150 lines for service within 14,000 26-gauge cable feet or its equivalent of the same central office in a rural area;

(B) contain the name, address, telephone number, and signature of the retail customer(s) seeking service, the advanced service(s) requested, and the date of the request;

(C) contain the name, address, and telephone number of a contact person;

- (D) state whether an advanced services provider is already providing, is contracted to provide, or is willing to provide advanced services in the rural area seeking the advanced service; and
 - (E) state whether an Internet service provider is providing or commits to provide functional Internet connectivity in the rural area seeking the advanced service.
- (3) **Notice of Bona Fide Retail Request.** After determination that a request is a Bona Fide Retail Request, the commission shall:
- (A) notify electronically or by mail all companies electing under PURA Chapter 58 and all COA and SPCOA holders of the Bona Fide Retail Request;
 - (B) post notice of the Bona Fide Retail Request on the commission website; and
 - (C) publish notice of the Bona Fide Retail Request in the *Texas Register*.
 - (D) The commission shall include in the notification, post on the commission website, and publish in the *Texas Register*:
 - (i) the name, address, and telephone number of the contact person;
 - (ii) the number of lines requested;
 - (iii) the number of customers requesting service;
 - (iv) the location of the rural area; and
 - (v) any other information the commission deems relevant.

- (4) **Commission selection proceeding.** After notification of the Bona Fide Retail Request, the commission shall establish a proceeding to select the company or companies obligated to provide an advanced service.
- (A) **Company response.** Each company subject to this section for the rural area seeking advanced services shall submit a proposal for the provision of one or more advanced services to the retail customer(s) seeking service through the Bona Fide Retail Request determined by the commission under this section.
- (i) Each company shall submit its proposal within 30 days after publication of the Bona Fide Retail Request notice in the *Texas Register*.
- (ii) All proposals shall comply with the requirements of subsection (d) of this section.
- (iii) A company required to submit a proposal may contest the obligation to serve by setting forth the basis of its challenge. The company must, however, file its proposal as required by this subsection.
- (B) **Company response exemption.** A company subject to this section for the rural area seeking advanced services is presumed to be exempt from the requirements of this subsection and is not required to submit a proposal for the provision of advanced services if, at the time the Bona Fide Retail Request is published in the *Texas Register*, the company served fewer than 150 local exchange telephone service lines within 14,000 26-gauge cable

feet or its equivalent of the same central office as determined for the Bona Fide Retail Request under this section in the last month of the most recent quarterly reporting period submitted to the commission pursuant to Local Government Code, Chapter 283.

- (C) Commission determination. Within 150 days after notice of the Bona Fide Retail Request is published in the *Texas Register*, the commission shall determine the selected company or companies obligated to serve the retail customer(s) seeking service through the Bona Fide Retail Request determined by the commission under this section.
- (D) Selection criteria. When selecting the company or companies obligated to serve, among other factors the commission may deem relevant, the commission shall consider:
- (i) the overall quality of telecommunications service in the rural area;
 - (ii) the characteristics and attributes of network facilities in the rural area;
 - (iii) the terrain and geographic features of the rural area;
 - (iv) the number of local exchange telephone service providers in the rural area;
 - (v) the population and population density of the rural area;
 - (vi) the number of local exchange telephone service customers the company serves in the rural area;
 - (vii) the manner or method by which the company provides local exchange telephone service in the rural area;

- (viii) whether a company that provides local exchange service through resale or unbundled network element platform can purchase advanced services through resale or unbundled network element platform in the rural area;
- (ix) the extent to which the selection may prohibit or have the practical effect of prohibiting the ability of any company to provide local exchange telephone service in rural areas;
- (x) a company's planned response for subsequent requests for service within 14,000 26-gauge cable feet or its equivalent of the same central office as determined for the original Bona Fide Retail Request under this section;
- (xi) the method by which the company would provide an advanced service in the rural area; and
- (xii) whether a company provides service in proximate urban areas to the rural area seeking advanced services.

This agency hereby certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the commission's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §26.143 relating to Provision of Advanced Services in Rural Areas is hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 24th DAY OF APRIL 2002.

PUBLIC UTILITY COMMISSION OF TEXAS

Commissioner Brett A. Perlman

Commissioner Rebecca Klein