

**PROJECT NO. 21175**

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

**PROPOSAL FOR PUBLICATION AS APPROVED AT THE  
OCTOBER 18, 2001, OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes new §26.143, relating to Provision of Advanced Services in Rural Areas. The proposed new rule will implement the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §51.001(g) and §55.014 (Vernon 1998 & Supplement 2001), 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. Project Number 21175 has been assigned to this proceeding.

The proposed new section sets forth procedures whereby a retail customer within a rural service area may seek advanced services in order to access the Internet. The proposed section establishes in subsection (e) a competitive forum for all retail customers in a rural area to seek advanced services from any advanced services provider. Following this, the proposed 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 sets forth the bona fide retail request procedures that retail customers must utilize in order to request the reasonably comparable advanced services. The new section defines "rural area" and addresses the parameters for determining reasonably comparable advanced telecommunications services, including reasonably comparable prices, terms, and conditions. The section outlines the requirements of service and establishes commission proceedings for selection of serving companies.

In 1999, as part of Senate Bill 560 (SB 560), the 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, the commission initiates this rulemaking proceeding to provide rural retail customers with a competitive process for the provision of advanced services and to ensure that retail customers in rural areas have access to reasonably comparable advanced services offered by companies subject to PURA §55.014.

Mr. Don Ballard, Chief Attorney, Policy Development Division, has determined that for the first five-year period the new section is in effect there will be no fiscal implications

on state government. The fiscal implications for local governments with retail customers requesting advanced services may consist of legal, personnel, or consulting service costs associated with compilation of a request for services with the commission and with establishing aggregation and fulfilling the bona fide retail request process. The extent to which a local government will have retail customers participating in competitive or bona fide retail request activities or will itself participate in a request for advanced services will vary greatly across the state.

No reductions in costs to the state and to local governments are estimated as a result of enforcing and administering this section as proposed. No loss or increase in revenue to the state or to local governments is estimated as a result of enforcing and administering this section as proposed.

Mr. Ballard has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the section will be the deployment of advanced services offered in urban service areas to retail customers in rural service areas. First, rural local governments may experience economic benefits resulting from increased attraction of business and resident location within the area. Second, the effect on small businesses or micro-businesses as a result of enforcing the proposed rule will be the ability of these entities to request advanced services. Receipt and use of advanced services may provide businesses the ability to acquire remote business practices, create a larger customer base, and generate greater levels of financial performance. Additionally, small businesses or micro-businesses may experience greater

levels of efficiency and productivity. The extent to which small businesses or micro-businesses will be effected by the acquisition of advanced services will vary greatly among different businesses.

The anticipated economic effect on the companies subject to the proposed section will consist of costs associated with infrastructure and equipment upgrades, capital improvements, engineering, personnel, marketing, and other miscellaneous costs associated with fulfilling bona fide retail requests or responses in the competitive process. These costs, however, will be dependent on the number of retail lines requested, the number of customers seeking service, the type of service requested, and the geographic location and features of the area seeking service. The proposed section contemplates, however, that companies will recover their costs of providing service through rates charged to the rural retail customers who request and are receiving an advanced service. Subsection (d)(2) provides that a company charging a monthly retail price within 140% of the monthly retail price of the advanced telecommunications service offered in the same company's proximate urban area is presumed to be compliant with the rule and statute. Under the proposed section, moreover, a company is permitted to charge a monthly retail price that is higher than 140% of an urban area price if the company shows that a higher price is necessary to recover its reasonable costs in providing an advanced service in the rural area. Further, a company is permitted to require of the rural retail customers a term commitment for the advanced service. The anticipated economic effect on persons utilizing this proposed section will consist of personnel, planning, and legal costs associated with establishing demand for the competitive and bona fide retail request

process. The number of individuals participating in the competitive bona fide retail request process and the number with need for support services will vary greatly among different rural areas and communities.

Mr. Ballard has also determined that for each year of the first five years the proposed section is in effect there may be a sustained effect on the local economy of rural areas requesting advanced services. As stated above, the anticipated result of enforcing the section will be the deployment of advanced services offered in urban service areas to retail customers in rural service areas. Advanced services provided under this section would allow end use customers in rural areas to access the Internet more quickly and more efficiently than is currently the case in the rural area. 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. 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 and require more workers due to greater demand for their goods and services. Likewise, new business enterprises may create added workforce prospects because of the options

available through increased connectivity to the Internet. The extent to which local employment in particular rural areas will be effected by the acquisition of advanced services 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.

The commission staff will conduct a public hearing on this rulemaking, if requested under Government Code §2001.029, at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, in the Commissioners' Hearing Room, on Thursday, December 13, 2001, at 9:00 a.m.

Comments on the proposed new rule (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 20 days after publication. Reply comments may be submitted within 30 days after publication. In particular, the commission requests comments on the appropriate number of lines of service necessary for a bona fide retail request under subsection (f)(2)(A), and economically how or why that number is appropriate or essential. Comments are also requested, in the context of requiring a company to provide an advanced service, 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% rebuttal presumption on price and the availability of a contract term commitment. The commission additionally invites specific

comments regarding the benefits that will be gained by implementation of the proposed section. All comments should refer to Project Number 21175.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2001) (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 §§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 alternative 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 alternative 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 a 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) A company shall not be required to provide advanced services in a rural area if no Internet service provider is providing or commits to provide Internet connectivity in the rural area seeking the advanced service that is compatible with the advanced service to be deployed by the company.

- (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.
- (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;

(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;
    - (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 proposed section has been reviewed by legal counsel and is within the commission's authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 26th DAY OF OCTOBER 2001 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
RHONDA G. DEMPSEY**