

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.

Subchapter I. Alternative Regulation.

§26.175. Reclassification of Telecommunications Services for Electing Incumbent Local Exchange Companies (ILECs).

- (a) **Purpose.** The provisions of this section:
- (1) establish the minimum criteria and standards for reclassifying a basic network service as a discretionary service or competitive service; or a discretionary service as a competitive service, in accordance with the Public Utility Regulatory Act (PURA) §58.024; and
 - (2) to establish the procedures to be followed in petitioning for reclassification.
- (b) **Application.** This section applies to electing ILECs.
- (c) **General standards for reclassification of a service.** The following conditions must be satisfied to reclassify a service.
- (1) **Prerequisite for reclassification of a service.** The commission may reclassify a service only if each competitive safeguard prescribed by PURA Chapter 60, Subchapters B through H, is fully implemented.
 - (2) **Designation of reclassification area.** An electing ILEC must designate the exchange areas for which it is seeking to reclassify each service. A reclassification area must contain the entire territory of each exchange area designated.
 - (3) **Identification of services to be reclassified.** An electing ILEC must identify each service which it is seeking to reclassify and must specify for each service whether the service is for residential lines, business lines, or both.
 - (4) **Public interest standard.** The reclassification of the service is just and reasonable, is not unreasonably preferential, prejudicial, or discriminatory, or predatory or anti-competitive, and is in the public interest.
 - (5) **Rate changes.** Rate changes must be contemplated by the commission, in a separate proceeding, after reclassification has occurred.
- (d) **Standards for reclassification of a basic network service as a discretionary service.** In addition to meeting the requirements of subsection (c) of this section, the following conditions must be satisfied to reclassify a basic network service as a discretionary service:
- (1) The service is not necessary to complete a telephone call; and
 - (2) Public policy determines that the service does not need to remain in a basic network service classification.
- (e) **Standards for reclassification of a basic network service or discretionary service as a competitive service.** In addition to meeting the requirements of subsection (c), the following conditions must be satisfied to reclassify a basic network service as a competitive service, or to reclassify a discretionary service as a competitive service:
- (1) There is an alternative facilities-based provider offering the same, equivalent, or substitutable service at comparable rates, terms, and conditions in the reclassification area;
 - (2) At least 60% of access lines of the type, either residential, business, or both, for which the service is provided that are located in the reclassification area have access to alternative, facilities-based providers;
 - (3) Substantial barriers to entry do not exist for the relevant market;
 - (4) The existing competitors have or can easily obtain additional capacity, or new competitors may easily enter the market in response to an increase in price of the electing ILEC's rates; and
 - (5) The electing ILEC does not have market power sufficient to control the price of the service in the reclassification area in a manner that is adverse to the public interest.

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- (f) **Requirements for notice and contents of the application in compliance with this section.**
- (1) **Notice of Application.** The electing ILEC must provide direct notice to all certificate of convenience and necessity, service provider certificate of operating authority, and certificate of operating authority holders offering service in the reclassification area and issue notice to each customer of the ILEC in the reclassification area. The notice must include a description of the requested reclassification, the service, the proposed rates, the reclassification area, other terms of the service, the types of customers likely to be affected if the application is approved, the proposed effective date for the application, and the following language: "Persons who wish to comment on this application should notify the commission by (specified date, ten days before the proposed effective date), and (any other item required by the presiding officer). Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the PUCT Consumer Protection Division at (512) 936-7120 or toll free at (888) 782-8477. Hearing- and speech-impaired individuals may contact the commission through Relay Texas at 1-800-735-2989."
- (2) **Contents of application for each electing ILEC seeking a service reclassification.** In addition to the commission's filing requirements, one copy of the application must be delivered to commission staff and one copy must be delivered to the Office of Public Utility Counsel (OPUC). The application must contain the following:
- (A) A showing by the electing ILEC that the competitive safeguards in PURA, Chapter 60, Subchapters B through H have been met;
- (B) For each exchange in the reclassification area, a description of the reclassification sought, each service, the rates, terms, and conditions under which each service is currently provided, how the proposed reclassification of each service is just and reasonable and is not unreasonably preferential, prejudicial, discriminatory, predatory or anti-competitive;
- (C) A description of the reclassification area, specifying the exchange area or areas, for which the reclassification is requested;
- (D) The proposed effective date of the reclassification;
- (E) A statement detailing the method and content of the notice, if any, the utility has provided or intends to provide to the public regarding the application and a brief statement explaining why the electing ILEC's notice proposal is reasonable and that the electing ILEC's notice proposal complies with applicable law;
- (F) A copy of the text of the notice, if any;
- (G) A showing that the relevant standards required under subsection (d) or (e) of this section, whichever is applicable, have been satisfied for each exchange in the reclassification area;
- (i) An estimate of the number and size of alternative facilities-based providers offering the service to be reclassified for each exchange in the reclassification area;
- (ii) The total number and percentage of the electing ILEC's subscribers of the service in the reclassification area, for each exchange, measured by number of customers and access lines;
- (iii) An estimate of the electing ILEC's market share for the service, for each exchange, measured by number of customers and access lines; and
- (H) An explanation of how the reclassification of the service advances the public interest for each exchange in the reclassification area.
- (g) **Commission processing of application.**
- (1) **Administrative review.** An application considered under this section is eligible for administrative review unless the electing ILEC requests the application be docketed or the

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presiding officer, for good cause, determines at any point during the review that the application should be docketed.

- (A) The operation of the proposed rate schedule may be suspended for 35 days after the effective date of the reclassification. The effective date must be no earlier than 30 days after the filing date of the application or 30 days after public notice is completed, whichever is later.
 - (B) The application must be reviewed for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant must be notified within ten working days of the filing date of the specific deficiency in its application, and the earliest possible effective date of the reclassification will be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any deadlines will be determined 30 days from the day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date.
 - (C) While the application is under administrative review, the commission staff and the staff of OPUC may submit requests for information to the electing ILEC. A copy of all answers to such requests for information must be filed with central records and must be provided to OPUC within ten days after receipt of the request by the electing ILEC.
 - (D) No later than 20 days after the filing date of the sufficient application, interested persons may provide to the commission staff written comments or recommendations concerning the application. Commission staff will and OPUC may file with the presiding officer written comments or recommendations concerning the application.
 - (E) No later than 35 days after the effective date of the reclassification, the presiding officer will issue an order approving, denying, or docketing the electing ILEC's application.
- (2) **Approval or denial of application.** The application will be approved by the presiding officer if the proposed reclassification complies with each requirement of this section. If, based on the administrative review, the presiding officer determines that one or more of the requirements not waived have not been met, the presiding officer must docket the application.
 - (3) **Standards for docketing.** The application may be docketed in accordance with §22.33(b) of this title (relating to Tariff Filings).
 - (4) **Review of the application after docketing.** If the application is docketed, the deadline is automatically suspended to 120 days after the applicant has filed all direct testimony and exhibits, or 155 days after the effective date of the reclassification, whichever is later. Affected persons may move to intervene in the docket, and the presiding officer may schedule a hearing on the merits. The application must be processed in accordance with the commission's rules applicable to docketed cases.