

## CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.

### Subchapter J. COSTS, RATES AND TARIFFS.

#### §26.208. General Tariff Procedures.

- (a) **Application.** This section establishes the process for commission review of a dominant certificated telecommunications utility (DCTU) tariff and tariff amendments. A DCTU must meet the requirements of this section to file a new tariff or amend an existing tariff to which this section applies, including changes to a rate or service, the types of service provided, jurisdiction or service area, or for the withdrawal of a service. For purposes of this section, the term “trade association” means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.
- (1) This section applies to a DCTU and to an affiliate of a DCTU or a trade association that elects to file or amend a tariff on a DCTU’s behalf, and to each tariff filed by those entities in accordance with §26.207 of this title (relating to Form and Filing of Tariffs) and the following provisions, as applicable:
    - (A) section 26.209 of this title (relating to New and Experimental Services) or §26.210 of this title (relating to Promotional Rates for Local Exchange Company Services), if determined to be necessary by the presiding officer; or
    - (B) section 26.211 of this title (relating to Rate Setting Flexibility for Services Subject to Significant Competitive Challenges).
  - (2) This section does not apply to a person, or a tariff submitted by a person, to which §26.89 of this title (relating to Nondominant Carriers’ Obligations Regarding Information on Rates and Services) or §26.171 of this title (relating to Small Incumbent Local Exchange Company Regulatory Flexibility) applies.
  - (3) For purposes of this section, “major rate change” means an increase in rates that would increase the aggregate revenues of an applicant more than \$100,000 or two and a half percent, whichever is greater. The term does not include an increase in rates approved by the commission, or otherwise ordered by the commission after hearings are held with public notice.
- (b) **General tariff requirements.**
- (1) **DCTU tariff amendments involving a major rate change.** For a tariff amendment involving a major rate change, an applicant must meet the following requirements prior to amending its tariff.
    - (A) File an application with the commission at least 35 days before the effective date of the proposed change to the DCTU’s tariff;
    - (B) Provide notice to affected persons, including each municipality and customer affected by the change, in the manner prescribed by subsection (c) of this section, or as otherwise required by the presiding officer; and
    - (C) If applicable, publish notice of the DCTU’s intent to change rates in accordance with PURA §53.103, as provided under subsection (c)(1)(C)(i) and (ii) of this section. Notice under this subparagraph is waived if the rate change only involves a rate reduction.
  - (2) **Non-major rate changes and other DCTU tariff amendments.** For a tariff amendment that does not involve a rate change under paragraph (1) of this subsection, a DCTU must meet the following requirements prior to amending its tariff:
    - (A) File an application with the commission at least 35 days before the effective date of the proposed change to the DCTU’s tariff; and
    - (B) Provide notice to affected persons in the manner prescribed by subsection (c) of this section or as otherwise required by the presiding officer. An applicant may request a waiver to this requirement if the tariff amendments are of an administrative or clerical

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nature, or have minimal or no impact to the public, as determined by the presiding officer.

- (c) **Public notice.** An application must include plans to provide public notice of the tariff filing.
- (1) **General requirements for public notice.**
- (A) Prior to the issuance of notice, an applicant may request, or the presiding officer may require, the contents of the notice to be reviewed and approved by the presiding officer.
  - (B) Notice must be written in plain language and must contain sufficient detail to provide each affected person, including each affected municipality, adequate notice of the filing.
  - (C) Notice may be provided electronically unless otherwise required by the presiding officer or, if the application involves a major rate change, in accordance with PURA §53.103, which requires the applicant to:
    - (i) publish, in a conspicuous form and place, notice to the public of the proposed change once each week for four successive weeks before the effective date of the proposed change in a newspaper having general circulation in each county containing territory affected by the proposed change; and
    - (ii) mail notice of the proposed change to any other affected person as required by the commission's rules.
  - (D) The presiding officer may require notice to be provided to the public in addition to that proposed by the DCTU.
- (2) **Content of public notice.** Public notice of the application must include at a minimum:
- (A) a description of each service or proposed service and each applicable rate;
  - (B) the proposed effective date of the service or, if the service is promotional or experimental, the time period during which the promotional rates are proposed to be in effect;
  - (C) each customer class likely to be affected if the application is approved
  - (D) the probable effect on the DCTU's revenues if the service is approved; and
  - (E) the following language: "Persons with questions or who want more information on this application may contact (DCTU name) at (DCTU address) or call (DCTU toll-free telephone number) during normal business hours. A complete copy of the application is available for inspection at the address listed above. The commission has assigned Control Number (provided by DCTU) to this application, located at (hyperlink to application). Persons who wish to formally participate in the commission's proceedings concerning this application, or who wish to express their comments concerning this application should contact the Public Utility Commission of Texas, Consumer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission's Office of Consumer Protection at (512) 936-7120 or, toll free, at (888) 782-8477. Hearing- and speech-impaired individuals may contact the commission through Relay Texas at (800) 735-2989. Requests to participate in the proceedings and comments should reach the commission no later than (date, 20 days after the application was filed)."
- (d) **Proof of notice.** An application must include a statement indicating the date public notice was completed in accordance with subsection (c) of this section and a copy of the issued notice.
- (e) **Effective date of tariff amendment.**
- (1) **General standard.**
- (A) The effective date of an applicant's tariff must be no earlier than 35 days after the date a sufficient application is approved by the presiding officer.

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- (B) On the presiding officer's own motion or at the request of the applicant, an alternative effective date may be established unless a specific effective date is required under this section or other law.
- (2) **Early effective date.** Upon a showing of good cause by the applicant, the presiding officer may approve a sufficient application, other than an application involving a major rate change, to take effect prior to the 35-day period prescribed by paragraph (1) of this subsection.
  - (A) The presiding officer may establish additional conditions, such as notice, that an applicant must meet prior to granting an early effective date. Any additional conditions prescribed by the presiding officer are subject to suspension of the effective date under paragraph (4) of this subsection.
  - (B) Upon approval of an early effective date by the presiding officer, the applicant must immediately revise the tariff to include the change.
- (3) **Recalculation of effective date upon cure of an insufficient application.** Upon the filing of an application curing each deficiency specified by the presiding officer, any deadlines must be determined from the date the application is deemed sufficient or from the effective date if the presiding officer extends that date.
- (4) **Suspension of effective date.** For an application involving a rate change, the commission may suspend the effective date of the tariff change for 150 days after the requested effective date.
  - (A) In the event that a hearing on the merits exceeds 15 working days, the suspended effective date is extended two calendar days for each working day the hearing exceeds 15 working days.
  - (B) If the presiding officer does not make a final determination concerning the effective date of a rate change before the expiration of the suspension period, the effective date is automatically approved unless a hearing is already in progress.
- (f) **Administrative review.** An application filed in accordance with this section will be reviewed administratively.
  - (1) **Review of sufficiency.**
    - (A) The presiding officer will deem an application to be sufficient if it, at a minimum:
      - (i) includes an effective date and, as applicable, meets the requirements of subsection (b)(1)(A) or (2)(A) of this section;
      - (ii) meets the requirements of §26.207 of this title and the applicable provision specified by subsection (a)(1) of this section under which the application was filed;
      - (iii) includes proof that notice of the application was provided in compliance with subsection (d) of this section; and
      - (iv) if the application involves the withdrawal of a service, that the requirements of subsection (i) of this section have been met.
    - (B) No later than 20 days after the date an application is filed:
      - (i) an interested person, including the Office of Public Utility Counsel (OPUC), may file written comments or recommendations concerning the sufficiency of the application; and
      - (ii) commission staff must file a recommendation regarding the sufficiency of the application.
    - (C) If the presiding officer concludes that the application is insufficient, the presiding officer will notify the applicant of the insufficiency in the relevant portions of the application and cite the particular requirement with which the application does not comply. The presiding officer will grant the applicant an opportunity to cure each specific deficiency within a specified time period, and change the effective date in accordance with subsection (e)(3) of this section.

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- (2) **Substantive review of application.** The presiding officer must approve or deny an application not later than 60 days after a complete application is filed. An application is complete if the presiding officer has deemed that the application is sufficient under paragraph (1) of this subsection.
- (A) The presiding officer will substantively review the application to determine whether the application fulfills the requirements of this subparagraph and other applicable law. To approve an application, the presiding officer must, at a minimum, determine that:
- (i) the proposed rates and terms of the service are not unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive; and
- (ii) provision of the service is consistent with the public interest in a technologically advanced telecommunications system, the preservation of universal service, and the prevention of anticompetitive practices and of subsidization of new and experimental services with revenues from regulated monopoly services.
- (B) Commission staff must file a recommendation regarding whether the application meets the substantive requirements of this paragraph. Commission staff's recommendation on whether an application meets the substantive requirements for administrative approval may be provided with its recommendation on the sufficiency of the application in accordance with paragraph (1) of this subsection, or in a subsequent filing.
- (C) While the application is under substantive review by the presiding officer, commission staff and OPUC may submit requests for information to the applicant.
- (i) Notwithstanding the requirements of §22.144 of this title (relating to Requests for Information and Requests for Admission of Facts), the applicant must file the requested information with the commission within 15 days after receipt of such a request for information.
- (ii) If an applicant does not respond to a request for information within the time period specified by clause (i) of this subparagraph, the presiding officer will reject the application without prejudice and notify the applicant of the rejection.
- (iii) If the presiding officer does not approve or deny the application within 30 days from the date the requested information is filed with the commission, the application is automatically approved.
- (3) **Automatic approval.** A complete application is automatically approved 60 days from the date it is filed if:
- (A) the presiding officer does not approve or deny the complete application; and
- (B) commission staff or the presiding officer do not request supplemental information from the applicant.
- (4) **Docketing prohibited.** An application, except for an application involving a rate increase as provided by subsection (h) of this section, cannot be docketed.
- (g) **Approval or denial of applications.** For an application to be approved, the applicant must meet the requirements of the applicable provisions of this section and other applicable law, unless such requirements are modified or waived by the presiding officer. If, based on the administrative review, the presiding officer determines that:
- (1) all requirements not waived have been met, the application will be approved in the manner specified by the presiding officer.
- (2) one or more of the requirements not waived have not been met, the presiding officer will:
- (A) dismiss the application without prejudice; or

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- (B) docket the application in accordance with subsection (h) of this section if the application involves a rate change, except for a rate change covered by §26.171 of this title.
- (h) **Docketing of an application involving a rate change.** The presiding officer may docket an application involving a rate change, except for a rate change covered by §26.171 of this title, in accordance with this section.
- (1) If an application is docketed, the presiding officer may suspend the effective date of a rate change in the manner provided by subsection (e)(4) of this section via order.
  - (1) A copy of all answers to requests for information issued after docketing must be filed with the commission within 15 days after receipt of the request.
  - (2) An affected person may move to intervene in the docket, and a hearing on the merits will be scheduled.
  - (3) The application will be processed in accordance with the commission's rules applicable to docketed proceedings.
- (i) **Withdrawal of a service.** When an applicant seeks to withdraw a tariffed service, the application must be filed in accordance with this subsection. An applicant must provide the following in its application before withdrawing a service.
- (1) The control number for the project where the tariff was filed, including a hyperlink to the project;
  - (2) Proof of notice by the applicant, as required by subsection (d), or as otherwise required by the presiding officer.
  - (3) The number of current customers in each exchange, by customer class;
  - (4) The reason for withdrawing the service;
  - (5) Provisions for grandfathering each current customer or for competitive alternatives available within the exchange locations, including each alternative provided by the DCTU;
  - (6) Annual revenues for the last three years for the service; and
  - (7) If the service has no current customers, the applicant must provide an affidavit to this effect.