

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.

Subchapter J. COSTS, RATES AND TARIFFS.

§26.210. Promotional Rates for Local Exchange Company Services.

- (a) **Application.** This section applies to dominant certificated telecommunications utilities (DCTUs) as that term is defined by §26.5 of this title (relating to Definitions) which are subject to the ratemaking jurisdiction of the commission for any service or market.
- (1) A DCTU may alternatively seek approval for an application for a promotional rate in accordance with §26.208 of this title (relating to General Tariff Procedures), however the presiding officer may require any application for a promotional rate to also comply with the requirements of this section.
 - (2) If an application for a promotional rate is reviewed under this section, each promotional rate must comply with the requirements of §26.208 of this title.
- (b) **Purpose.** The procedures outlined in this section are intended to establish a process by which DCTUs may obtain authorization for offering promotional rates for the purpose of increasing long term demand for a service or utilizing unused capacity of the DCTU's network.
- (c) **Filings requesting approval of promotional rates.** After the effective date of this section, a DCTU may request approval of promotional rates for a service by following the procedures outlined in this section. Not later than 35 days prior to the proposed effective date of the promotional rate, the DCTU must file with the commission an application containing the following information:
- (1) a statement of intent by the DCTU to use the procedures established in this section;
 - (2) a description of the specific proposed or tariffed service for which promotional rates are proposed and a description of the temporary rates for such service proposed by the DCTU;
 - (3) if the promotional rates are proposed to be offered on less than a system-wide basis as provided in subsection (d) of this section, a description of the locations for which the promotional rates are proposed;
 - (4) the starting date and ending date of the period over which the promotional rates are proposed to be offered;
 - (5) a description of all time periods during the five years preceding the filing of this application for which promotional rates were offered for the service as authorized under this section;
 - (6) a statement detailing the type of notice, if any, the DCTU has provided or intends to provide to the public regarding the application and a brief statement explaining why the DCTU's notice proposal is reasonable and in compliance with §26.208 of this title;
 - (7) a copy of the notice;
 - (8) detailed documentation showing the long run incremental cost of the service for which promotional rates are requested, including projections of revenues, demand and expenses of the service for the period during which the promotional rates are proposed to be offered. The commission will allow an incumbent local exchange company (LEC) that is not a Tier 1 LEC as of September 1, 1995, at that company's option, to adopt the cost studies approved by the commission for a Tier 1 LEC. The application must include projections of the effect of the promotional rate on the service's revenues and cost and its impact on the service's contribution during the promotional period and over the remaining life of the service. The application must also include all workpapers and supporting documentation relating to computations or assumptions contained in the application; and
 - (9) any other information which the DCTU wants considered in connection with the commission's review of its application.
- (d) **Modification and waivers of requirements.** In its application a DCTU may request the waiver of the long run incremental cost requirements set forth in this section. Such a waiver will only be granted if the presiding officer determines that the long run incremental cost standard imposes an unreasonable burden on a DCTU which has inadequate resources to produce the required cost information to meet

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the standard and if the presiding officer determines that an appropriate alternative cost standard is available. If the long run incremental cost standard is waived, the DCTU must provide other cost information showing the relationship between its proposed promotional rates and the costs of providing the service. A DCTU may also request a waiver of the requirement that promotional rates be offered in every exchange when such rates are proposed to be offered for a tariffed service which is being expanded into central offices which previously did not provide the service. Any request for waiver of the long run incremental cost information requirement or the system-wide application of the promotional rates requirement must include a complete statement of the DCTU' arguments supporting that request.

- (e) **Notice of intent to file.** At least ten days before any application under this section may be filed by a DCTU, the DCTU must file a statement of intent to file such an application and the expected filing date. Such notice must also include a statement of the DCTU's intent to use the expedited procedures of this section, a description of the service, and a description of the proposed promotional rates and the proposed promotional period. The commission must then publish notice of the DCTU's intent to file such application in the *Texas Register*.
- (f) **Requirements for promotional rates.** Unless waived or modified by the presiding officer as provided in subsection (d) of this section, the following requirements must apply to promotional rates approved under this section:
 - (1) the promotional rates must be offered in every exchange in which the service is offered throughout the DCTU's system;
 - (2) promotional rates for any particular service in any specific exchange must not be offered for more than six months during any five-year period, and no customer must be charged promotional rates for more than three consecutive months;
 - (3) promotional rates must be offered only to new customers of a service or to new and existing customers, provided that, for existing customers, the promotional rates must only apply to additional units of service ordered during the promotional rate period; and
 - (4) the promotional rate must be designed to generate sufficient revenue to recover the long run incremental cost of providing the service (or, if the long run incremental cost standard is waived, such other costs as are approved by the commission) within one year of introduction of the promotional rate. If the proposed promotional rate is for the reduction or elimination of an installation charge or service connection charge, the revenue and costs related to provision of the entire service must be used in determining whether the cost standard for the service is met. If the proposed promotional rate is for a service whose tariffed rate does not recover the costs of providing the service, a promotional rate may be approved if the DCTU can demonstrate that the promotional rate will move the service closer to full cost recovery. However, no promotional rate must be approved for a service whose tariffed rate does not recover the cost of the service if such service has been found to be subject to significant competition under §26.211 of this title (related to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges) or if the service is enumerated in the Public Utility Regulatory Act §52.057. The commission may approve a promotional rate even if it does not provide a contribution to joint and common costs.
- (g) **Notification to the public of services to be offered at promotional rates.** If promotional rates for a service are approved under this section, all advertising related to such service and its promotional rates must clearly describe the temporary nature of the rate, the date on which the promotional rate will expire, and the rate which will apply after expiration of the promotional rate. The DCTU must provide the same information to all customers requesting rate information for such service or ordering the service during the period the promotional rates are in effect.

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- (h) **Reporting requirements.** If promotional rates are approved, the DCTU must file with the commission a report showing the actual revenues, demand and related expenses and investment for the service over each period promotional rates are in effect. This report must be filed with the commission within three months after each authorized period for offering promotional rates has expired.
- (i) **Treatment of revenues and expenses related to promotional rates in subsequent rate cases.** In any subsequent rate case in which a service was offered at promotional rates during the test year, the revenues attributed to such service must be adjusted upward to reflect the revenues which would have been collected if all customers who were charged the promotional rate had been charged the permanent tariffed rate over the promotional period.
- (j) **Subsequent review of the promotional rates.** If promotional rates for a service are approved under the procedures set forth in this section, the commission's Office of Regulatory Affairs, the Office of Public Utility Counsel, or any affected person may file with the commission a petition seeking modification of the rates or terms under which the promotional rate is offered or withdrawal of the promotional rate. If multiple promotional rate periods are approved for a service under the provisions of this section and if the reports filed in accordance with subsection (h) of this section indicate that the rates for the service did not recover the costs of the service as required in subsection (f) of this section, the commission must initiate an inquiry into the reasonableness of such promotional rates and must suspend those rates pending the completion of the inquiry.
- (k) **Provisions for SLECs.** Notwithstanding §26.208 of this title and subsections (c), (d), and (f) of this section, the provisions of this subsection apply to a small local exchange company (SLEC) as defined in §26.5 of this title (relating to Definitions). If the presiding officer determines that the SLEC is seeking to adopt as its promotional rates for its services the rates for the same or similar services offered by an incumbent local exchange carrier:
 - (1) the SLEC's proposed rates and terms of the service will be deemed not to be unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive; and
 - (2) a waiver of the incremental cost standard will be granted.