

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.

Subchapter J. COSTS, RATES AND TARIFFS.

§26.212. Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs).

- (a) **Application.** This section applies to an incumbent local exchange company that is regulated pursuant to the Public Utility Regulatory Act (PURA) Chapter 58.
- (b) **Purpose.** The purpose of this section is to establish expedited procedures for a Chapter 58 electing ILEC to introduce a new service or to modify the rates or tariff terms for an existing service.
- (c) **Definitions.** The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.
 - (1) **Basic network service** — This term has the meaning assigned in PURA §58.
 - (2) **Competitive service** — This term has the meaning assigned in PURA §58.
 - (3) **Electing incumbent local exchange company(ILEC)** — An ILEC that has filed the election referenced in PURA §58.
 - (4) **Existing discretionary service** — This term has the meaning assigned in PURA §58. An existing discretionary service had a commission-approved rate in existence on September 1, 1995.
 - (5) **New service** — This term has the meaning assigned in §26.5 of this title (relating to Definitions). The term new service shall include a discretionary service for which no rate was in effect on September 1, 1995.
- (d) **General provisions.**
 - (1) Tariffs and notices shall be written in plain language, shall contain sufficient detail to give customers and affected parties adequate notice of the filing, and shall conform to the requirements of and in compliance with §26.207 of this title (relating to Form and Filing of Tariffs) and §26.208 of this title (relating to General Tariff Procedures). If an application contains material deficiencies, all time frames set forth in the rule shall be adjusted day-for-day until such deficiencies are cured.
 - (2) Rates and terms for a package of services that contains a basic network service shall be governed by the procedures found in subsection (k) and (l) of this section.
 - (3) Rates and terms for a package containing discretionary services and competitive services but no basic network service shall be governed by the procedures found in subsections (i) and (j) of this section.
 - (4) A local exchange company that does not elect to be regulated pursuant to PURA Chapter 58 may not exercise the pricing flexibility available to an electing ILEC even if the local exchange company concurs in a tariff of an electing ILEC.
 - (5) If commission staff recommends rejection of an application, an electing ILEC may request docketing.
 - (6) The commission may suspend the effective date of a tariff change proposed under this section for 120 days after the proposed effective date. If an application is docketed, the operation of the proposed tariff shall be automatically suspended to a date 120 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after the proposed effective date, whichever is later.
- (e) **Notice.** Semi-annually, an electing ILEC shall notify affected persons, either by bill insert, bill message, or direct mail, that proposed changes in the rates or terms of service are regularly published in the *Texas Register* through the Office of the Secretary of State. Such notification shall also appear in the public information pages of all telephone directories published in Texas. The

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

Subchapter J. COSTS, RATES AND TARIFFS.

notification shall identify the Internet address for the *Texas Register* (www.sos.state.tx.us) and shall
provide a toll-free phone number for affected persons to request direct notice from an electing ILEC
of
proposed

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.

Subchapter J. COSTS, RATES AND TARIFFS.

§26.212(e) continued

changes in the rates or terms of service. For purposes of notice, affected persons include the applicant's Texas customers, persons registered with the commission to offer long distance service, and persons certified by the commission to provide local exchange telephone service.

(f) **Proprietary or confidential information.**

- (1) Information filed pursuant to this rule is presumed to be public information. An electing ILEC shall have the burden of establishing that information filed pursuant to this rule is proprietary or confidential.
- (2) Nothing in this subsection shall be construed to change the presumption that information filed pursuant to this rule is public information. An electing ILEC that intends to rely upon data it purports is proprietary or confidential in support of an application made pursuant to this section shall submit one copy of the proprietary or confidential data to the Office of Regulatory Affairs subject to a commission-approved protection agreement. An electing ILEC that intends to rely upon proprietary or confidential data has the burden of providing such data on the same date the associated tariff sheets are filed. In the event an electing ILEC's proprietary or confidential data is not provided with the associated tariff sheets, the procedural schedule shall be adjusted day-for-day to reflect the number of days the proprietary or confidential data is delayed.

(g) **Establishment of a long run incremental cost floor.** Establishment of a LRIC floor requires commission approval of a cost study prepared by an electing ILEC pursuant to the standards in §23.91 of this title (relating to Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility Services). After commission approval of a LRIC floor for a particular service, an electing ILEC may change the rates of that service in accordance with the procedures in this section. The procedures in this section may not be available to an electing ILEC for a service that does not have a LRIC floor. An electing ILEC that has 5.0% or fewer of the total access lines in this state may adopt the cost, if determined through a LRIC study based on §23.91 of this title, for the same or substantially similar services offered by a large ILEC without the requirement of presenting LRIC studies of its own.

(h) **Price changes for competitive services.**

- (1) After commission approval of a LRIC floor, an electing ILEC may exercise pricing flexibility or may change the price of a competitive service. An electing ILEC may set the price for a competitive service at any level above the long run incremental cost of the service, except that the price of the service may not be increased by an electing ILEC in a geographic area in which the service or a functionally equivalent service is not readily available from another provider.
- (2) An electing ILEC may file one or more revised tariff sheets to introduce new or modified rates or terms for competitive services. The tariff sheets shall be accompanied by a commission-approved application. The tariff sheets shall be received and effective on an interim basis, subject to refund, the day following the filing or on a later date designated by the electing ILEC.
- (3) The commission shall cause notice of the application to be published in the *Texas Register*. The notice shall state the intervention deadline, which shall be no earlier than five days following publication.
- (4) On or before five days after the intervention deadline of the application, commission staff may file a recommendation to suspend, docket, or reject the electing ILEC's application. If either a request for intervention or a recommendation to docket is filed, the expedited administrative

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

Subchapter J. COSTS, RATES AND TARIFFS.

procedures in this subsection shall no longer apply. The tariff sheets shall remain effective, on an interim basis, unless an order is issued to change the status.

- (5) If neither an intervention request nor a commission staff recommendation to suspend, docket, or reject is timely filed, the commission shall issue an order approving the tariff sheets.

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.

Subchapter J. COSTS, RATES AND TARIFFS.

(i) Price changes for existing discretionary services.

- (1) After commission approval of a LRIC floor, an electing ILEC may exercise pricing flexibility or may change the price of an existing discretionary service within the range of the LRIC floor and the price in effect on September 1, 1995, by following the procedures in this subsection.
- (2) An electing ILEC shall file a commission-approved application to introduce new or modified rates or terms for an existing discretionary service. On the same date, an electing ILEC shall file one or more tariff sheets to introduce new or modified rates or terms for services with the commission-approved application and all data necessary to support the application shall accompany the tariff sheets.
- (3) The commission shall cause the notice of the application to be published in the *Texas Register*. The published notice shall state the intervention deadline, which shall be no earlier than five days following publication of notice. On or before five days after the intervention deadline of the application, commission staff may file a recommendation to suspend, docket, or reject the electing ILEC's application. If either a request for intervention or a recommendation to docket is filed, the expedited administrative procedures in this subsection shall no longer apply. If neither an intervention request nor a staff recommendation to suspend, docket, or reject the application is filed, the tariff sheets shall be approved by the commission effective ten days following the intervention deadline.

(j) Establishment of prices for new discretionary services. An application to establish a price for a new discretionary service shall be administered in the same manner as price changes for existing discretionary services, except that in addition to establishing the long run incremental cost of a new service, an electing ILEC shall file information which complies with the commission's requirements for establishment of a price ceiling. After commission approvals of both a LRIC floor and a price ceiling are obtained, an electing ILEC may flexibly price a new service within the range of the LRIC floor and the price ceiling by following the procedures in subsection (i) of this section.

(k) Price decreases for basic network services.

- (1) After commission approval of a LRIC floor, an electing ILEC shall follow the procedures in this subsection to decrease a rate for a basic network service or to change the tariff terms of a basic network service.
- (2) An electing ILEC shall file a commission-approved application to decrease the rate for or change the tariff terms of a basic network service. On the same date, an electing ILEC shall file one or more tariff sheets to decrease a rate for or change the terms of a basic network service with the commission-approved application and all data necessary to support the application shall accompany the tariff sheets.
- (3) The commission shall cause a notice of the application to be published in the *Texas Register*. The published notice shall state the intervention deadline, which shall be no earlier than 15 days following publication of notice. On or before five days after the intervention deadline of the application, commission staff may file a recommendation to suspend, docket, or reject the application. If either a request for intervention or a recommendation to docket is filed, the expedited administrative procedures in this subsection shall no longer apply. If neither an intervention request nor a staff recommendation to suspend, docket, or reject the application is filed, the tariff sheets shall be approved by the commission effective ten days following the intervention deadline.

(l) Price increases for basic network services.

- (1) For a four-year period following Chapter 58 election, an increase in the rate for a basic network service is permitted only after commission approval and only within the parameters set forth in

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.

Subchapter J. COSTS, RATES AND TARIFFS.

PURA §§58.054 - 58.057 and this section. Changes to tariff terms require commission approval as set forth in PURA §58.052(b).

§26.212(l) continued

- (2) An electing ILEC shall file an application on the commission-approved form to increase the rate for a basic network service. The application shall refer to this section, shall be accompanied with sufficient documentary support to demonstrate that the rate adjustment meets the criteria prescribed in PURA Chapter 58, shall describe the increase, and shall identify, with specificity, the customers and competitors to be affected by the electing ILEC's application. The application shall include a copy of the text of any proposed notice to customers. The proposed notice to customers shall comply with §26.208 of this title and shall meet the criteria prescribed in PURA §58.059 and §53.103. The application shall also state the electing ILEC's preferred effective date, which shall be no earlier than 90 days after completion of notice.
- (3) On the same date that the application is filed, an electing ILEC shall file one or more tariff sheets to increase the rate for a basic network service with the commission-approved application. All data necessary to support the application shall accompany the tariff sheets.
- (4) The commission shall cause notice of the application to be published in the *Texas Register*. The published notice shall state the intervention deadline, which shall be no earlier than 40 days following publication of notice. After publication of notice in the *Texas Register*, the presiding officer shall establish a deadline for the filing of a staff recommendation, which shall be no earlier than five days following the intervention deadline.
- (5) Within 20 days of filing of the application and revised tariff sheets, the presiding officer shall notify the applicant if material deficiencies exist in the application and if the proposed notice is inadequate.
- (6) Within 50 days of filing of the application and revised tariff sheets, the applicant shall file an affidavit attesting to the fact that notice to customers was published in accordance with the requirements of PURA §58.059 and §53.103. The affidavit shall contain a copy of all notice given.
- (7) Following receipt of a request for intervention filed by an affected party, or on the recommendation of commission staff, or on the commission's own motion, the commission may suspend the effective date of the rate adjustment and may hold a hearing. After a review, the commission shall issue an order approving, modifying, or rejecting the rate adjustment if it is not in compliance with this rule and PURA §§58.056, 58.057 or 58.058. Any order modifying or rejecting the proposed rate adjustment shall specify why the proposed adjustment is not in compliance with the applicable provisions of PURA §§58.056, 58.057 or 58.058 and the means by which the proposed adjustment may be brought into compliance.