The Public Utility Commission of Texas (commission) adopts new §26.227, relating to Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58 Electing Companies with changes to the proposed text as published in the May 19, 2000 *Texas Register* (25 TexReg 4442). New §26.227 will establish the procedures for a Chapter 58 electing company to introduce nonbasic services, including new services, and to exercise pricing flexibility for basic and nonbasic services, and for complaints regarding service offerings introduced through informational notice filings. This new section is adopted under Project Number 21161.

New §26.227 implements provisions of Senate Bill 560 (SB 560), 76th Legislature, Regular Session, related to procedures for processing of informational notice filings by Chapter 58 electing companies. First, §26.227 establishes filing and notice requirements for informational notice filings related to pricing flexibility and nonbasic services, including new services. Second, §26.227 establishes procedures for resolving disputes as to sufficiency or appropriateness of informational notice filings. Finally, §26.227 establishes the procedures for handling complaints regarding services offered through informational notice filings. Pursuant to the new Chapter 58 provisions enacted by SB 560, tariffs previously subject to commission approval are authorized to go into effect as soon as ten days after the provision of informational notice. Further, pursuant to the new Chapter 58 provisions, any formal review of such service tariffs will arise in the context of a complaint filed by an interested party. The implementation procedures are necessary

to allow for an efficient and timely review of such services offerings. The complaint process contemplated by SB 560 in connection with informational notice filings is also new. The commission developed §26.227 to assure fair and equitable handling of such complaints.

Comments on §26.227

On June 16, 2000 the commission received written comments on Project Number 21161 from the U.S. Department of Defense (DOD) and the Office of Public Utility Counsel (OPC). On June 19, 2000 the commission received written comments on Project Number 21161 from Southwestern Bell Telephone Company (SWBT), General Telephone Company of the Southwest, Inc. (GTESW), AT&T Communications Texas (AT&T), and the Coalition of Competitive Local Exchange Carriers (CLEC Coalition). A public hearing on the proposed section was held at commission offices on June 27, 2000 at 9:30 a.m. Representatives from SWBT, Allegiance Telecom of Texas, Inc. (Allegiance), AT&T, OPC, United Telephone Company of Texas, Inc., doing business as Sprint and Central Telephone Company of Texas doing business as Sprint and Sprint Communications Company L.P. (collectively, Sprint), and the CLEC Coalition attended the hearing and provided comments. On July 3, 2000, reply comments were received from Sprint, SWBT, GTESW, AT&T, and the CLEC Coalition. All timely filed comments, including any not specifically referenced herein, were fully considered by the commission.

Comments on §26.227(c)(2)(B)

Subsection (c)(2)(B) establishes the effective date of service offerings based on informational notice filings.

SWBT commented that use of the phrase "no earlier than ten days after" in this subsection does not track the statutory language of Public Utility Regulatory Act §58.063 and §58.153, both of which read "ten days after." SWBT speculated that the variance was the result of the possibility that interim relief may be granted, suspending the tariff. SWBT recommended language that would make the service offering effective ten days after the electing company filed a complete informational notice with the commission.

In reply comments, CLEC Coalition observed that SWBT's argument ignored the possibility that an electing company might want to establish an effective date other than precisely ten days after the filing. The CLEC Coalition saw neither any reason to limit this possibility through the use of SWBT's proposed change nor any benefit to the company which would outweigh such flexibility in the rule.

The commission disagrees with SWBT's proposed change. PURA §58.063 and §58.153 state that an electing company "may introduce" a new service or package "10 days after providing an informational notice…" The commission interprets the intent of the legislature to be that an electing company may choose an effective date on or after the

tenth day. To employ the language recommended by SWBT would mandate an effective date ten days after the informational notice, foreclosing a flexibility provided by statute.

Comments on §26.227(c)(2)(C)

Subsection (c)(2)(C) addresses treatment of confidential information filed with the commission as part of an informational notice filing.

In initial comments, OPC observed that, while §26.227(c)(2)(A) requires that a copy of confidential information associated with an informational notice be provided to OPC at the time of filing, §26.227(c)(2)(C), as proposed, makes no explicit parallel provision for OPC to have access to that information. OPC proposes the following change: "Access to confidential information filed with the commission as part of an informational notice filing shall be available to the commission staff and OPC, upon execution of a commission approved protective agreement, at the time the informational notice is filed."

The commission agrees and modifies §26.227(c)(2)(C) to include references to OPC.

CLEC Coalition and DOD took the position that confidential information filed with an informational notice should be made available to other parties without the necessity of filing a complaint.

While recognizing the incumbent local exchange carriers' (ILEC) concerns regarding protection of sensitive information, the CLEC Coalition urged that some mechanism other than the filing of a complaint be established for obtaining access to cost studies. CLEC Coalition argued that it is in all parties' interest to avoid needless complaints. Therefore, CLEC Coalition asked that the commission consider allowing third-party representatives (outside experts) an opportunity to review the ILECs' cost studies at the commission's or at the ILECs' offices upon execution of a protective agreement. CLEC Coalition asserted that such a procedure would offer at least some opportunity to evaluate the ILEC's claim that its prices exceed costs, while minimizing the number of times and the number of persons afforded access to proprietary data. CLEC Coalition argued that, because no CLEC would incur the cost of hiring an outside expert to spend time reviewing an ILEC's cost studies unless it had good reason to believe a problem existed, if the CLEC's concerns were misplaced, that fact could be discovered without the necessity of expending its own resources and the resources of other parties on a complaint.

GTE filed reply comments in opposition to the CLEC Coalition's position. GTE argued that the CLEC Coalition's concerns are misplaced and that its proposal fails to allay the ILECs' concerns that extremely sensitive materials would be disclosed upon the rollout of a new offering. It is GTE's position that the proposal also raises questions about the commission's ability and authority to review the basic requirements established by the legislature. GTE argued that giving third-party representatives access to competitively sensitive information would be both anticompetitive and potentially unduly burdensome

for ILECs. GTE asserted that provision of competitively sensitive information to every CLEC or its representative would effectively transform informational notice proceedings into contested cases before there was any good reason to believe that a problem exists and, as such, is overly burdensome, anti-competitive, and contrary to the legislature's intention of streamlining consumer offerings.

DOD argued that all affected parties should be allowed access to confidential information at the time that an informational notice is filed. DOD, while recognizing the ILECs' legitimate need to withhold competitively sensitive information from public scrutiny, asserted that access to such information, subject to a protective order, is critical to the determination of whether ILEC prices meet the standards established by PURA. DOD argued that the ability of affected parties to scrutinize confidential cost support before the filing of complaints is likely to result in more focused and specific complaints when problems are found and to eliminate unnecessary complaints, thus allowing the commission to focus its resources on the resolution of legitimate disputes between ILECs and CLECs in an effective and expeditious manner.

SWBT responded to DOD's comments, urging rejection of the DOD's proposal to allow "other affected parties" to review highly sensitive confidential information filed by electing companies with their informational notice filings. SWBT asserted that, as proposed by DOD, tens of thousands of customers and competitors could be considered "other affected parties" who would routinely be permitted access to sensitive electing company confidential information. SWBT argued that customers would be placed at a

huge advantage in the negotiating process if they knew their suppliers' cost and marketing information; competitors would also receive a huge marketplace advantage if they knew this same kind of information about their competitors. SWBT further asserted that the significant harm that would result from accidental or unauthorized disclosure or misuse of such information far outweighs any benefit that could possible come from routinely allowing competitors and customers to scrutinize their competitors' and/or suppliers' confidential cost and marketing information.

The commission rejects both the DOD's and CLEC Coalition's proposals. Given that commission staff and OPC have the ability and responsibility to review such information, the potential benefits of making confidential information included with an informational notice filing available for review by ILECs' competitors and/or customers outside the context of a complaint are outweighed by the potential harm. Such a rule would present the dual risks of being unduly burdensome and anti-competitive.

Comments on §26.227(c)(2)(D)(ix)

Subsection (c)(2)(D)(ix) establishes the long run incremental cost (LRIC) study requirement for information notice filings.

SWBT filed comments suggesting that §26.227(c)(2)(D)(ix) would create an administrative burden not contained in the statute. SWBT stated that the filing of a notice of intent does not affect when the electing company files its LRIC study. SWBT

suggested that this step should instead be amended to track the language of proposed §26.225(d)(1)(B) in Project Number 21157, *Requirements Applicable to Nonbasic Services for Chapter 58 Electing Companies*, which states that "any application to establish or modify a LRIC shall be filed by an electing company with the commission's Filing Clerk on or before the date a related informational notice is filed."

The CLEC Coalition filed reply comments stating that SWBT rightly noted proposed §26.227(c)(2)(D)(ix) is inconsistent with proposed §26.225(d)(1)(B). However, the CLEC Coalition argued that it is the latter provision that should be amended in order to give the commission staff sufficient time to evaluate both the informational notice filing and its underlying LRIC study.

Sprint filed reply comments pointing out that the rules in PURA allow any ILEC to elect Chapter 58 at any time. Therefore, the provisions dealing with the filing of LRIC studies in the proposed rules dealing with Chapter 58 electing companies have to be changed to include smaller ILECs that may want to elect into Chapter 58 at some future point in time.

SWBT appears to be correct in its observation that the filing of a notice of intent does not affect when an electing company files its LRIC study because the ten-day period represents a "minimum" period. For example, the company could, if it wished, file the LRIC study 30 days after filing its notice of intent. Furthermore, the commission acknowledges the CLEC and SWBT observation that the wording in §26.225(d)(1)(B) is

inconsistent with §26.227(c)(2)(D)(ix). Therefore, the commission modifies the last sentence of §26.227(c)(2)(D)(ix) and replaces it with the wording, "The electing company shall file a notice of intent to file LRIC studies pursuant to §26.214 or §26.215 of this title no later than ten days prior to the filing of the LRIC study." The provision as modified would tie the filing of the notice of intent to the LRIC studies rather than to the informational notice filing. The commission notes that an electing company's failure to file its LRIC "notice of intent" in a timely manner in conjunction with its LRIC study is a violation of Substantive rule §26.215 and should be dealt with in that context. It should also be noted that the modification of the last sentence in §26.227(c)(2)(D)(ix) would not obviate an electing company's requirement to file a LRIC study before or at the time it files an informational notice filing. Section 26.227(c)(2)(D)(ix) as modified is consistent with §26.225(d)(1)(B).

The commission also acknowledges that §26.227(c)(2)(D)(ix) should refer to §26.214 in addition to §26.215. Section 26.215 applies to dominant certificated telecommunications utilities (DCTUs) with annual revenues from regulated telecommunications operations in Texas of $100 million or more for five consecutive years. Section 26.214 applies to incumbent local exchange companies (ILECs) with annual revenues from regulated telecommunications operations in Texas of less than $100 million for five consecutive years. Because any local exchange company may elect to be regulated under PURA Chapter 58, it is appropriate to refer to §26.214, as well as §26.215, in §26.227. Thus, the commission modifies §26.227(c)(2)(D)(ix) accordingly.

Comments on §26.227(c)(2)(D)(x)

Subsection (c)(2)(D)(x) requires an informational notice filing to include a response to the question: "Is the sum of the Total Element Long Run Incremental Cost (TELRIC)-based wholesale prices of components needed for provision of the retail service at or below the retail price set forth in this filing?"

SWBT opposed §26.227(c)(2)(D)(x) on the grounds that it imposes a pricing restriction, condition, or burden based on the TELRIC-based wholesale price of the underlying components. SWBT argued that the requirement is not based on PURA, is inconsistent with PURA, and is inconsistent with the antitrust law and sound public policy. SWBT suggested that proposed §26.227(c)(2)(D)(x) should not be adopted. SWBT is concerned that it will never pass a TELRIC test for residential service, whether it is packaged with other services or promoted as a stand-alone product, when, for example, its price is $8.15 for basic residential rate group one and $11.05 for basic residential rate group eight and the Unbundled Network Element (UNE) loop rate is over $14.

AT&T stated in its reply comments that PURA explicitly supports this provision. AT&T argued the LRIC standard that SWBT relies on is not the entire story; a non-basic service must not only be priced above LRIC, but must also meet the imputation standards in PURA Chapter 60. AT&T referred to its comments in Project Number 21155, *Rulemaking to Implement PURA Chapter 58 Provisions Relating to Customer Specific Contracts, Packaging Flexibility and Promotional Offerings,* regarding §26.226(d)(3).

The CLEC Coalition supported this provision and referred to its comments filed in Project Number 21155.

The commission finds that the information required to be filed pursuant to §26.227(c)(2)(D)(x) would not be unduly burdensome on electing companies. The commission notes that information required under this provision is the same as that furnished by the electing companies currently in their filing package pursuant to interim filing requirements for informational notice filings. The information requested is public information and the TELRIC based prices have been adopted by the commission in prior arbitration proceedings. The commission finds that the elimination of the rebuttable presumption of anticompetitive practice from §26.225 and §26.226 adequately addresses SWBT's concerns. However, the provision of the information required by §26.227(c)(2)(D)(x) becomes more critical to those who must rely on this information to make a decision to initiate a complaint against the electing company.

Additionally, the commission notes that the answer to the question in the negative or affirmative does not trigger an insufficiency recommendation by commission staff and will therefore neither delay the effective date of the informational filing nor adversely affect an electing company's ability to offer services or packages of services in a timely manner. The commission therefore declines to delete §26.227(c)(2)(D)(x).

Comments on §26.227(c)(2)(D)(xi)

Subsection (c)(2)(D)(xi) requires a response to the question: "Is the service available for resale by a competitor?"

AT&T stated in its comments that some ILECs have apparently been interpreting this provision to mean "resale by *any one* category of competitor." AT&T argued that some ILEC filings under Chapter 58 have represented that the service is available for resale to the ILECs' competitors, when in fact the service is not available for resale to all competitors of the ILEC. AT&T maintained that statutory requirements must be applied. AT&T proposed two options for correcting the language of this clause: (1) mirror the language of the federal Telecommunications Act of 1996 (FTA) and the resale obligations imposed upon ILECs by FTA §251(c)(4), and require an electing ILEC to affirm that the service is available to "all telecommunications carriers" or (2) require that ILECs affirm the availability for resale in at least two separate statements, one confirming resale for CLECs, and one confirming resale for IXCs.

The commission does not believe it is necessary to define the term "competitor" in the manner suggested by AT&T. Commission policies regarding whether a service or package of services should be offered on a resale basis to particular categories of competitors is best addressed through facts developed in individual contested cases.

Comments on §26.227(c)(2)(D)(xii)

Subsection (c)(2)(D)(xii) requires an electing company to file an affidavit addressing the electing company's cost recovery in package offerings combining regulated and unregulated products or services and/or products or services of an electing company's affiliate.

AT&T expressed its concern that the "cost to the electing company" of offering an unregulated service provided by an affiliate may be zero, or may be limited simply to the cost of billing and collection. AT&T posed the hypothetical case of an ILEC with an IXC affiliate. If long distance service is billed by the ILEC at a price below the IXC's cost, then a competitor who must pay switched access will not be able to compete against the long distance portion of the ILEC's offer. AT&T also asserted that a CLEC would not be able to compete with a bundled offer unless it is able to obtain or produce long distance service at costs that are also less than the ILEC-affiliate IXC's cost. AT&T proposes that an ILEC be required to demonstrate that the total bundled offer recovers the total cost of the offer, including all the costs of the affiliate.

GTE commented that §26.227(c)(2)(D)(xii) goes beyond the mandates of PURA. GTE cited the argument that it presented in its opposition of §26.226(d)(4) in Project Number 21155. GTE argued that the provision inappropriately links the cost of unregulated products and services with the pricing of packages that contain those products and services. GTE stated that the commission has no jurisdiction over the rates for unregulated offerings in the package, and that PURA §52.0584, relating to ILEC pricing and packaging flexibility, highlights the commission's responsibility for oversight

exclusively of the *regulated components* of the package. GTE also argued that the linkage of unregulated costs in establishment of package price floors is anticompetitive. GTE maintained that competitors are allowed to price their package without regard to the economies of any underlying unregulated products and services while ILECs, under the proposed rule, would have this additional hurdle. GTE proposed that the requirement should be eliminated and the proposed provision struck in its entirety. In the alternative, GTE proposed the requirement of an affidavit attesting to the fact that the regulated components of the package are not cross-subsidizing the unregulated components.

In its reply comments, GTE disagreed with AT&T's position that ILECs be required to demonstrate that the unregulated components of a bundled offering are recovering their total costs, including all of the costs of the affiliate. GTE argued that the linkage of any unregulated costs to the price of a bundled offering is inappropriate, unnecessary, anticompetitive, and would generally make it more difficult for ILECs to offer bundles in competition against the offerings of competitors. GTE also disagreed with AT&T's proposal to require regulated TELRIC cost studies of any unregulated services included in a bundle by ILECs. GTE asserted that AT&T's proposal would inefficiently and unnecessarily limit the pricing flexibility of one class of carrier, while other unregulated competitors could purchase regulated services and bundle them with other products and services without any regulatory constraints concerning the price of the bundled offering. GTE recommended that the commission strike this proposed rule provision.

CLEC Coalition referred to its proposed changes to §26.226(d)(4) in Project Number 21155. CLEC Coalition pointed out that although the commission can rely on the Federal Communication Commission's (FCC's) affiliate rules to insure that the ILEC is purchasing the affiliate's product at cost and therefore recovering that cost in the package, that will not address the situation in which an affiliate simply makes its products or services available to the ILEC for marketing with the ILEC's services. CLEC Coalition proposed changes to subsection (c)(2)(D)(xii) that would require Chapter 58 electing companies to file an affidavit indicating that the price of such packages recover the costs to the Chapter 58 electing company of acquiring and providing the unregulated company's and/or affiliate's products or services, and, if the electing company does not purchase the affiliate's products or services included in the package, that the affidavit specify the cost that would have been incurred by the electing company if it had purchased the product or service at the affiliate's cost, if available, or at the standalone retail market price. The CLEC Coalition acknowledged that the commission cannot regulate the price of unregulated services or affiliate services; nevertheless, the CLEC Coalition asserted that the commission has oversight of ILECs and can prevent an ILEC from engaging in anticompetitive behavior.

In its reply comments, the CLEC Coalition referred to their comments on §26.226(d)(4) and disagreed with GTE's suggestion that the commission eliminate the requirement that GTE affirm that the price of a package recovers GTE's cost for any unregulated or affiliate products or services included in the package. CLEC Coalition also disagreed with GTE's alternative proposal to require the electing company to file an affidavit

attesting to the fact that the regulated components of the package are not cross-subsidizing the unregulated components. CLEC Coalition asserted that such an affidavit would be meaningless because GTE could still pay more to purchase an affiliate's component than it is recovering.

SWBT stated in its reply comments that it agrees with GTE, which recommended that this proposed subsection be struck in its entirety. SWBT also commented that proposed §26.227(c)(2)(D)(xii) violates PURA §60.165 since it proposed to impose an affiliate rule that is more burdensome than federal law. SWBT disagreed with GTE's proposed use of an affidavit attesting to the fact that the regulated components of the package are not cross-subsidizing the unregulated components. However, SWBT commented that it would agree to the following alternative affidavit requirement: in any package that includes affiliated products or services, SWBT proposes that electing companies be required to provide an affidavit that they have complied with all applicable affiliate transaction accounting safeguards established by federal law or the FCC.

The commission agrees with the CLEC Coalition that regulated products or services which are packaged with or jointly marketed with unregulated products or services or the products or services of an electing company's affiliate merit scrupulous attention. A heightened level of scrutiny is necessary to protect competitors and customers. However, the commission disagrees with the changes suggested by AT&T and the CLEC Coalition. This subsection complements the requirements of §26.226(d)(4). With respect to that subsection, the commission has considered the concerns about cross-subsidization and

anticompetitive behavior in its effort to balance the public interest. Section 26.226(d)(4), as modified, requires an electing company to price certain packages and jointly marketed services at a level that is unlikely to be anticompetitive, preferential or prejudicial.

The commission understands the concerns regarding situations where the electing company purchases the unregulated or affiliate product or service at or near a rate of zero. But, the CLEC Coalition's proposed solution goes too far because requiring packages to recover retail prices of individual unregulated or affiliated products or services defeats the pricing benefits normally associated with packaging and joint marketing. The commission addresses this and other CLEC Coalition concerns, in part, by referencing the FCC's requirements in the adopted rule.

PURA §52.051(1)(C) prohibits an electing company from using revenues from regulated monopoly services to subsidize services subject to competition. In light of this prohibition, the commission believes that prices included in a joint marketing effort or a package offered by an electing company should comply with the requirements of PURA §52.051(1)(C) and the FCC's requirements.

PURA §60.165 requires the commission's rules for transactions between a local exchange company and its affiliates not to be more burdensome than federal law or applicable rules or orders of the Federal Communications Commission. The commission's expanded provisions, which incorporate by reference the FCC's requirements, meet the requirements of PURA §60.165. Therefore, the commission adopts

§26.227(c)(2)(D)(xii), with the following changes. The commission clarifies §26.227(c)(2)(D)(xii) to apply to regulated products or services packaged or jointly marketed with unregulated products or services and/or with an ILEC affiliate's products or services. Further, the commission adds language to specify affidavit requirements for package offerings or joint marketing efforts involving regulated products or services in combination with unregulated (unaffiliated) and/or products or services of the electing company's affiliate consistent with §26.226(d)(3)-(5).

Comments on §26.227(e)(5)

Subsection (e)(5) establishes the standing of the commission's Office of Regulatory Affairs (ORA) to participate in complaints arising out of informational notice filings.

GTE filed initial comments suggesting clarification of §26.227(e)(5) to establish with certainty whether the Office of Regulatory Affairs has intervened in a specific case. GTE suggested the following language: "The commission's Office of Regulatory Affairs shall have standing in all proceedings related to informational notice filings before the commission, and may intervene by filing a notice of intervention, at any time prior to determination on the merits. No motion is necessary for such intervention."

The commission agrees with the proposed change and modifies §26.227(e)(5) accordingly. Due to a restructuring of the agency, the commission further modifies the subsection to refer to the commission staff instead of ORA.

In addition to modifications described thus far, the commission makes other minor modifications for the purpose of clarifying its intent.

New §26.227 is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2000) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA, Chapter 58, Subchapter E, pertaining to nonbasic services and pricing flexibility for basic and nonbasic services and PURA, Chapter 60 pertaining to competitive safeguards.

Cross Reference to Statutes: PURA §§14.002, 51.002 and 51.004; PURA, Chapter 58 and Chapter 60.

§26.227. Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58 Electing Companies.

(a) **Application.** This section applies to any electing company as the term is defined in the Public Utility Regulatory Act (PURA) §58.002 who chooses to offer nonbasic services and/or exercise pricing flexibility for basic and nonbasic services through informational notice filings. Other sections applicable to an electing company include, but are not limited to, §26.224 of this title (relating to Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies), §26.225 of this title (relating to Requirements Applicable to Nonbasic Services for Chapter 58-Electing Companies) and §26.226 of this title (relating to Requirements Applicable to Pricing Flexibility for Chapter 58 Electing Companies).

(b) **Purpose.** The purpose of this section is to establish procedures for an electing company to introduce nonbasic services, including new services, and/or to exercise pricing flexibility for basic and nonbasic services, and for complaints regarding service offerings introduced through informational notice filings.

(c) **Informational notice filing and notice requirements related to pricing flexibility and nonbasic services, including new services.**

(1) **Notice requirements:**

(A) General notice requirements. An electing company shall provide the informational notice in compliance with this section to the commission, to the Office of Public Utility Counsel (OPC), and to any person who holds a certificate of operating authority in the electing company's certificated area or areas, or who has an effective interconnection agreement with the electing company.

(B) Additional notice requirements for an electing company serving more than five million access lines. In addition to the notice requirements in subparagraph (A) of this paragraph, an electing company serving more than five million access lines in this state shall:

(i) comply with the following notice requirements when proposing any changes in the generally available prices and terms under which the electing company offers basic or nonbasic telecommunications services regulated by the commission at retail rates to subscribers that are not telecommunications providers, including:

(I) introduction of any new nonbasic services;

(II) new features or functions of nonbasic services;

(III) promotional offerings of nonbasic services; or

(IV) discontinuation of then-current features or services.

(ii) Notice shall be provided to any person who

(I) holds a certificate of operating authority in the electing company's certificate area or areas; or

(II) has an effective interconnection agreement with the electing company.

(iii) The following timelines shall apply to the provisions of notice pursuant to this subsection:

(I) If the electing company is required to give notice to the commission, at the same time the company provides that notice; or

(II) If the electing company is not required to give notice to the commission, at least 45 days before the effective date of a price change or 90 days before the effective date of a change other than a price change, unless the commission determines that the notice should not be given.

(C) The requirement for additional notice under subparagraph (B) of this paragraph expires on September 1, 2003.

(2) **Filing requirements:**

(A) Filing of informational notice and confidential information. At the time the informational notice is filed in Central Records, a copy of the informational notice, including confidential information, shall be delivered to OPC. In addition to the record copy, an additional

copy of any confidential information shall be filed in Central Records for use by the commission staff.

(i) The commission shall assign each informational notice a unique control number and shall stamp the tariff sheets "received".

(ii) The commission staff shall file any notice of deficiencies for incomplete filings not in compliance with this section or pleading alleging that the service offering is inappropriately filed as an informational notice filing within three working days after the date of the filing of the informational notice.

(iii) Within two working days after the date of the commission staff's filing, the applicant shall file an explanation of the actions it has taken or intends to take in response to a notice or pleading filed under clause (ii) of this subparagraph.

(B) **Effective date**. A service offering shall be effective no earlier than ten days after the electing company files a complete informational notice with the commission.

(C) **Access to confidential information.** Access to confidential information filed with the commission as part of an informational notice filing shall be available to commission staff and OPC, upon execution of a commission approved protective agreement, at the time the informational notice is filed.

(D) Format of filing. An informational notice under this section must include the following elements:

(i) name of company;

(ii) PURA chapter under which company operates;

(iii) date of submission;

(iv) effective date;

(v) new and/or revised tariff pages, written in plain language and conforming with §26.207 of this title (relating to Form and Filing of Tariffs), governing the form and filing of tariffs;

(vi) proposed implementation date (if different from effective date);

(vii) affidavit of notice to OPC, COA holders, and parties to interconnection agreements;

(viii) type of filing (new service; pricing flexibility involving basic service; non-basic only pricing flexibility; packaging, term and volume discount or promotional offering regulated by PURA §58.004; customer specific contract; customer specific contract regulated by PURA §58.003; promotional offering);

(ix) relevant Long Run Incremental Cost (LRIC) study or LRIC study reference, and relevant support materials (confidential / proprietary / protected materials provided to

commission only). When LRIC studies for which commission approval has not been obtained are provided with an informational notice filing, an application for approval of that LRIC study must be filed pursuant to the standards in §26.214 of this title (relating to Long Run Incremental Cost (LRIC) Methodology for Services Provided by Certain Incumbent Local Exchange Companies (ILECs)) or §26.215 of this title (relating to Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility (DCTU) Services), as applicable, to establish a LRIC floor and shall be filed before or simultaneously with the informational filing. The electing company shall file a notice of intent to file LRIC studies pursuant to §26.214 or §26.215 of this title no later than ten days prior to the filing of the LRIC study.

(x) A response of "yes", "no", or "not applicable", with explanatory language to the following question: "Is the sum of the Total Element Long Run Incremental Cost (TELRIC)-based wholesale prices of components needed for provision of the retail service at or below the retail price set forth in this filing?" If the response is "yes" or "no", the filing must identify the components needed for the

provision of the retail service, along with a list of relevant wholesale and retail prices;

(xi) A response of "yes" or "no" to the following question: "Is the service available for resale by a competitor? If the answer is "no", does the proposed price meet the standards set forth in §26.274 (f) – (h) of this title (relating to Imputation)?" For purposes of this question, "available for resale" means:

(I) the service is not subject to tariffed resale restrictions; and

(II) the electing company is not aware of any constraints that would prevent a competitor from functionally provisioning the service to the competitor's customers in parity with the electing company's provisioning of the service to the electing company's customers;

(xii) For package offerings that combine regulated products or services with unregulated products or services and/or with the products or services of an electing company's affiliate, an affidavit indicating that the price of the package, in addition to the requirements of §26.226(d)(1) of this title (relating to Requirements Applicable to Pricing Flexibility for Chapter 58 Electing Companies), also recovers the cost

to the electing company of acquiring and providing the unregulated products or services or the affiliate's products or services. The affidavit shall also indicate that the cost to the electing company of acquiring and providing an affiliate's products or services is greater than or equal to the cost to the affiliate of acquiring and/or providing the products or services. The cost to an electing company of acquiring or providing the affiliate's products or services shall be valued in a manner consistent with FCC requirements and with §26.226(d)(5) of this title. For a joint marketing effort that includes regulated products or services and the products or services of an affiliate, an affidavit shall be provided by each affected affiliate attesting that the affiliate's costs are recovered in a manner consistent with §26.226(d)(5) of this title and FCC requirements, if any.

(xiii) description of the offering's terms and conditions, including location of service or a statement that it is to be provided state-wide; and

(xiv) a privacy concerns statement.

(d) **Disputes as to sufficiency or appropriateness of informational notice filing.**

(1) If the electing company advises the commission by written filing that a dispute exists with respect to a notice of deficiency or the inappropriateness of an informational notice, and requests the assignment of an administrative law judge to resolve the dispute, the commission will consider the dispute to be a contested case.

(2) A contested case will also exist if the commission files a complaint addressing sufficiency or appropriateness of an informational notice filing.

(3) Parties other than the commission staff may not challenge the sufficiency of an informational notice filing.

(e) **Complaints regarding service offerings introduced by informational notice filings.** An affected person, the Office of Public Utility Counsel (OPC), or the commission may file a complaint at the commission on or after the date the informational notice has been filed. The filing of a complaint will initiate a contested case.

(1) A complaint addressing an informational notice filing may challenge whether the filing is in compliance with PURA and/or commission substantive rules.

(2) If a complaint challenging the price of a new service is resolved in a final order issued by this commission in favor of the complainant, the electing company shall either:

(A) not later than the tenth day after the date the complaint is finally resolved, amend the price of the service as necessary to comply with the final resolution; or

(B) discontinue the service.

(3) The commission shall dismiss a complaint filed prior to the filing of an informational notice on the grounds that the commission lacks jurisdiction to hear the complaint.

(4) All complaints shall be docketed and governed by the commission's procedural rules and shall be filed and reviewed pursuant to the following requirements:

(A) Complaints shall be captioned: COMPLAINT BY {NAME OF COMPLAINANT} REGARDING TARIFF CONTROL NUMBER(S) {NUMBER(S)} {STYLE OF TARIFF CONTROL NUMBER}.

(B) Processing. The commission shall assign each complaint filed with respect to an informational notice a unique control number. The presiding officer shall cause a copy of each complaint, bearing the assigned control number, to be filed in the relevant tariff control number(s) for the related informational notice filings.

(5) The commission staff shall have standing in all proceedings related to informational notice filings before the commission, and may intervene by filing a notice of intervention, at any time prior to determination on the merits. No motion is necessary for such intervention.

(6) A complaint filed pursuant to this section shall be considered to be an exception to the informal resolution requirements of commission Procedural Rule §22.242 (c) of this title (relating to Complaints).

(f) **Interim relief.** A tariff for a new service introduced by an informational notice may not be suspended during the pendency of any complaint. All other tariffs introduced by informational notice filings will remain in effect during the pendency of any complaint unless interim relief suspending the tariff is granted pursuant to this subsection.

(1) Any request that a tariff be suspended during the pendency of a complaint must meet the following requirements:

(A) the pleading must state an appropriate and bona fide cause of action;

(B) the pleading must be verified or supported with affidavits based on personal knowledge; and

(C) the pleading must set forth the following elements: probable right of recovery, probable and irreparable injury in the interim, and no adequate alternative remedy.

(2) The presiding officer shall schedule a hearing on interim relief in the form of suspension of a tariff on an expedited basis.

(3) The burden of proof shall be upon the complainant with respect to each element of proof necessary to obtain any interim relief requested by the complainant.

This agency hereby certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §26.227 relating to Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58 Electing Companies is hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 29th DAY OF SEPTEMBER 2000.

PUBLIC UTILITY COMMISSION OF TEXAS

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Chairman Pat Wood, III

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Commissioner Judy Walsh

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Commissioner Brett A. Perlman