The Public Utility Commission of Texas (commission) adopts new §26.21 relating to General Provisions of Customer Service and Protection Rules, new §26.22 relating to Request for Service, new §26.23 relating to Refusal of Service, new §26.24 relating to Credit Requirements and Deposits, new §26.26 relating to Foreign Language Requirements, new §26.27 relating to Bill Payments and Adjustments, new §26.28 relating to Suspension or Disconnection of Service, new §26.30 relating to Complaints, and new §26.31 relating to Disclosures to Applicants and Customers, with changes to the proposed text as published in the July 7, 2000 *Texas Register* (25 TexReg 6452). These sections implement §§17.003(c), 17.004, 17.052(3), 64.003(c), 64.004, and 64.052(3) of the Public Utility Regulatory Act (PURA) as required by Senate Bill 86 (SB86) and Senate Bill 560 (SB560), 76th Legislative Session. The new sections are adopted under Project Number 21423.

The commission repeals the existing rules with these section numbers simultaneously with the adoption of these new sections. The following rules in Subchapter B, Customer Service and Protection, are not included in this project: §26.25 relating to Issuance and Format of Bill, §26.29 relating to Prepaid Local Telephone Service (PLTS), §26.32 relating to Protection Against Unauthorized Billing Charges ("Cramming"), and §26.34 relating to Telephone Prepaid Calling Services. Due to the extensive changes, adopting amendments to the existing rules was less practical than the alternative of repealing the existing sections and adopting new sections.

The new sections seek to foster competition while balancing customer protection and establish minimum customer service rules by which certificated telephone companies must abide in providing local telecommunications service. The focus of implementation includes delineation of standards for dominant certificated telecommunications utilities (DCTUs) and nondominant certificated telecommunications utilities (NCTUs), disclosure requirements, and the prohibition of fraudulent, unfair, misleading, deceptive, and anti-competitive practices.

The commission received comments on the proposed new sections from Carolyn Arnold-Communications Consultant, Inc. (CACC); Texas Council on Family Violence; Consumers Union Southwest Regional Office; The Office of the Attorney General, Consumer Protection Division, Public Agency Representation Section, The Office of Public Utility Counsel, and Texas Legal Services Center (jointly referred to as Consumer Commenters); The National ALEC Association/Prepaid Communications Association (NALA/PCA); Ben Sanford & Associates, Inc.; The Office of the Attorney General, Consumer Protection Division, Public Agency Representation Section on behalf of affected state agencies (OAG); Association of Communications Enterprises (ASCENT); Texas State Telephone Cooperative, Inc. (TSTCI); Texas Telephone Association (TTA); Southwestern Bell Telephone Company (SWBT); WORLDCOM; Randy Edwards - Phone Billing Examiners (PBX); Sprint Communications Company, L.P., United Telephone Company of Texas, Inc., and Central Telephone Company (jointly referred to as Sprint); Verizon Southwest and Verizon Select Services, Inc. (jointly referred to as Verizon); Coalition of Competitive Local Exchange Carriers (CLEC Coalition); and AT&T Communications of Texas, L.P. (AT&T).

A public hearing on the proposed new sections was held at the commission offices on August 15, 2000, at 9:30 a.m. Representatives from Consumer Union Southwest Regional Office, Texas Legal Services Center, AT&T, Casey, Gentz and Sifuentes, L.L.P., Valor Telecom, Grande Communications, SWBT, CACC, Sprint, the Office of Public Utility Counsel, TSTCI, Competitive Communications Group, Texas Council on Family Violence, NEXTLINK Texas, Inc., WORLDCOM, TTA, NALA/PCA, and Southwest Competitive Telecommunications Association (SWCTA) participated in the public hearing.

The commission received reply comments from Verizon, SWBT, AT&T, CLEC Coalition, NALA/PCA, Consumer Commenters, TSTCI, WORLDCOM, and SWCTA.

General Comments

Equal versus bifurcated rules for DCTUs and NCTUs

CACC, Consumer Commenters, TSTCI, and SWBT emphatically proposed that the customer service and protection rules apply equally to all certificated telecommunications utilities (CTUs). In support of their position, these commenters made the following points: PURA requires uniform standards for all CTUs; the Legislature's explicit finding was that increased competition has increased the need for customer service and protection; the perspective for the rules should be the customer, not the classification of the provider; uniform rules will not hinder competition, but instead encourage more participation by giving some assurance to reluctant consumers that the market will operate fairly; since NCTUs indicated that they couldn't survive unless they

provide better service than DCTUs, adhering to the DCTU standards should not be a problem; and currently, the industry is not making great strides in providing better service via the market approach.

ASCENT, WORLDCOM, Sprint, Verizon, CLEC Coalition, AT&T, and SWCTA strongly favored bifurcated rules with less restrictive requirements for NCTUs. In support of their position, these commenters made the following points: PURA encourages competition, distinguishes between DCTUs and NCTUs in many areas, and does not require uniform rules for all CTUs; the commission should first look to market solutions and apply regulatory mandates only when the market fails; uniform regulation is appropriate only when competitors are equally situated; incumbents have the competitive advantage since they have the customers and the systems to comply with current customer protection rules; equal application of rules would create substantial burdens and costs for NCTUs and inhibit competition; the market will force NCTUs to adopt a high level of customer service to attract and retain customers; and NCTUs need flexibility to differentiate themselves from DCTUs and allow customers choice in prioritizing price, quality, value, and service in varying ways.

The commission has carefully considered suggestions from all commenters and makes appropriate revisions to the proposed rules as detailed in the comments for each rule later in this preamble. The commission believes the adopted rules provide strong protections for all customers, while allowing flexibility to NCTUs and encouraging increased competition. Ultimately, a highly competitive local telecommunications market will benefit all customers. Although the commission has clear legal authority to impose its DCTU rules on NCTUs, it

chooses not to do so at this time. Customers continue to have the full protections they have had under a traditional monopoly through a DCTU and may choose a DCTU or an NCTU for local service. The commission believes that imposing fewer burdens on NCTUs will provide greater opportunity for meaningful competition. Nevertheless, the commission will continue to monitor the market and will make appropriate changes to these rules in the future in response to behavior by local service providers.

Eligible telecommunications providers (ETPs)

Consumer Commenters stated that the proposed rules distinguished between DCTUs and NCTUs, and placed more specific requirements on DCTUs. Consumer Commenters disagreed with the approach in the proposed rules and indicated that any differentiation in the application of these rules should not be based upon the incumbency of a provider, but on the provider's obligation to serve under the law and/or whether the provider receives support from the state or federal universal service fund. Consumer Commenters argued that in addition to DCTUs, ETPs also have an obligation to serve. ETPs are eligible to receive state and federal universal service funds, but in exchange must meet certain requirements, including service to all customers in their designated territory pursuant to the commission's Substantive Rule §26.417(c)(1) relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF). An ETP could be an NCTU or an uncertificated carrier (such as a wireless telecommunications provider), but with the advantage of receiving universal service fund support. Consumer Commenters further stated that with receiving TUSF come responsibilities

and obligations and, therefore, recommended that all ETPs be treated in the same manner as DCTUs.

In its reply comments, TSTCI supported Consumer Commenters' proposal. SWCTA did not disagree with Consumer Commenters' recommendation, but wanted assurance that the DCTU rules would apply only to those companies actually receiving support from the TUSF. WORLDCOM commented that because customers in rural and high-cost areas are in markets where competition is arguably lacking, the commission should not burden ETPs with DCTU standards. The NCTU rules and §26.417 provide more than adequate customer protection. If regulatory burdens are too high, NCTUs will choose not to enter these high-cost markets and will not seek ETP status. Therefore, WORLDCOM recommended the commission reject Consumer Commenters' proposed treatment of ETPs.

The commission does not agree with the proposal to apply the DCTU customer protection rules to ETPs. The commission believes that the NCTU rules and the ETP requirements in §26.417 provide substantial protections to customers and that imposing DCTU rules on ETPs could be a disincentive to attracting competition to rural and other high cost areas.

Limiting regulation of NCTUs

AT&T, WORLDCOM, and Verizon expressed concern about over-regulation of NCTUs. The parties commented that the commission should adopt new rules only to fix specific market

failures and should avoid burdensome and costly regulation that does not contribute to customer protection or public interest.

The commission does not agree that the adopted rules are overly burdensome or costly. These rules provide basic customer protections and adequately balance customer protections with regulatory requirements.

Limiting application of rules for large business customers

The CLEC Coalition commented that extensive regulatory oversight is not needed for competitive local exchange carriers (CLECs), whose customers generally consist of medium to large business customers because the customers are sufficiently sophisticated to adequately protect their own interests and CLECs lack the market power to capture and retain customers based upon meeting or exceeding the service standards of incumbent local exchange carriers (ILECs). The CLEC Coalition urged the commission to reconsider the need for regulating the relationship between CLECs and business customers. Other states have recognized the necessary dichotomy between residential/small business and larger commercial customers. In their comments, the CLEC Coalition suggested specific changes to the proposed rules, which are addressed later in this preamble.

The commission agrees that large business customers do not require the same level of regulatory protection as residential and small business customers. The commission makes appropriate revisions to the proposed rules as discussed later in this preamble.

Consistency with electric customer protection rules

Consumer Commenters identified the issue of consistency between these customer protection rules for telecommunications and those for electric restructuring in Project Number 22255. The prospect of having rules that are consistent for both industries has benefits, particularly since providers may sell the two services together as a package. Consumer Commenters pointed out that discussions at the workshops on the two sets of rules were quite different from one another. Telephone industry members focused on certain aspects of current rules that they wanted changed, while electric industry members focused on others. For example, the 16-day period to pay bills was strongly opposed by the telecommunications industry (and did not appear in the proposed rules), yet future retail electric providers conceded in workshops that it is a necessary protection that should remain. Consumer Commenters supported consistency in the telephone and electric rules to the extent that the highest standards of consumer protection are applied to both industries. They stated, however, that should the commission reject their position on any particular aspect of the rules for one industry, they would not, for consistency sake, be bound to accept a lower standard for the other industry.

In response to Consumer Commenters, WORLDCOM argued that telecommunications customer service protections should be evaluated independently of any electric utility standards. WORLDCOM further commented that customer service regulations should be guided by what is prudent in the competitive marketplace as opposed to what is merely more demanding.

The commission agrees that, where appropriate, consistency between the telecommunications and electric customer protection rules is beneficial. However, while the basic protections for customers of both industries are essentially the same, there are some industry differences that require separate approaches. Changes to the proposed rules to enhance consistency are discussed later in this preamble.

Implementation period

AT&T commented that the proposed new requirements for NCTUs would require extensive system, process, and documentation development to implement proposed §§26.27(b)(1), 26.27(b)(3), and 26.31. AT&T indicated that some developments will take at least 12 months to accomplish because of the number of interrelated systems that would be impacted. To mandate a flash cut to these new requirements would restrict innovation and prevent better customer service and choice. Accordingly, AT&T requested that at least 12 months be allowed to implement any new requirements that are adopted.

The commission urges all providers of local telecommunications service to take all necessary actions to comply with these adopted rules as soon as possible. The commission allows NCTUs until March 1, 2001 to implement the provisions of §§26.24, 26.26, 26.27, 26.28, and 26.31. The commission will consider any waiver request for an extension of time to comply. However, approval will require substantial justification.

§26.21, General Provisions of Customer Service and Protection Rules

Consumer Commenters recommended revising proposed §26.21(a) to require CTUs and ETPs who provide greater customer protections than the minimum required by the commission's rules, to put their policies in writing. Consumer Commenters stated that changes from the minimum rules must be in writing so that the commission can review the policy in the event a customer complains that a provider violated its own customer protection policy. Verizon, AT&T, CLEC Coalition, TSTCI, and SWCTA opposed the recommendation indicating it was burdensome and unnecessary.

AT&T commented on the last sentence in proposed §26.21(a). AT&T expressed concern that while the language is consistent with PURA §17.004(a)(4) and current Substantive Rule §26.4, relating to Statement of Nondiscrimination, there is a potential for unintended consequences. AT&T requested clarification that the commission does not intend for this language to implicitly impact other commission rules, such as §26.23 and §26.24.

Proposed §26.21(b) included a prohibition against CTUs engaging in "any fraudulent, unfair, misleading, deceptive, or anti-competitive practice." AT&T commented that it is unclear why this new subsection is added, given the current prohibitions of the Texas Deceptive Trade Practices-Consumer Protection Act (DTPA). AT&T stated that while the proposed language clearly reflects the provisions of PURA §17.004(a)(1), the manner in which the commission has proposed to incorporate this language into this rule has the potential to result in a significantly different legal impact. AT&T recommended either not including this proposed subsection as

written or modifying the language to match the corresponding words of the DTPA. Consumer Commenters did not concur with AT&T and recommended the proposed language be retained since it is an accurate restatement of a provision in PURA.

Consumer Commenters also stated that the definition in proposed §26.21(c)(4) is overly broad and proposed a definition which limits the term "in writing" to written words memorialized on paper and words sent via electronic communications.

CLEC Coalition recommended rewording proposed §26.21(d) to apprise carriers of which federal provisions will be enforced in Texas.

Consumer Commenters recommended adding a new subsection (e) to assure that business practices do not have the unintended effect of redlining or otherwise discriminating in consumer access to telecommunications services. Consumer Commenters recommended requiring CTUs to adopt specific written nondiscrimination policies, post notices, train employees, and submit the policies to the commission annually for review. Additionally, Consumer Commenters recommended requiring CTUs to report annually to the commission on the number served, complaints, and involuntary disconnections for residential customers by zip code+4.

The majority of the parties submitting reply comments strongly opposed Consumer Commenters' proposed new subsection (e) indicating that adequate non-discrimination protections exist and there is no demonstrated need to mandate additional regulatory burdens. The parties stated that the proposed subsection would be extremely onerous on CTUs and the commission, would stifle

innovation and legitimate test marketing, does not recognize the fundamental difference between targeted marketing and refusal of service, and could reveal confidential business plans. The parties suggested that a more efficient approach would be to rely on complaints to trigger a commission investigation and enforcement action, if appropriate. This targeted approach would focus on problematic carriers rather than mandating excessive reporting requirements for all providers. CLEC Coalition further commented that the Legislature was clearly more concerned about redlining by the electric industry than by the telecommunications industry. PURA §39.101(d) requires electric providers to report on service provided by zip code and census tract. The lack of such requirement in PURA for the telecommunications industry is an indication that the Legislature did not contemplate imposing such reporting requirements on telecommunications providers.

The commission makes clarifications to proposed §26.21(a) and (c)(4) (now (e)(4)). The commission will not tolerate any unlawful discrimination and will take swift enforcement action against any violator. However, the commission does not agree with Consumer Commenters' approach in their proposal. Instead, the commission adopts a new §26.21(b) that requires CTUs to establish an anti-discrimination policy and to provide complete documentation to refute any alleged discrimination. The commission declines to reword proposed §26.21(d) because the current wording is more in line with PURA §17.004(10). PURA requires that all customers be entitled to the protections and disclosures by the Fair Credit Reporting Act and the Truth in Lending Act.

§26.22, Request for Service

Consumer Commenters recommended restoring in proposed §26.22(a)(2)(A) the requirement in current §26.22(3) to complete construction of facilities within 90 days of a request. TTA, SWBT, and Verizon also recommended the published rule revert back to the current rule language. Verizon also noted the language of the current rule allows negotiation on an agreed completion date by both parties.

Consumer Commenters recommended revising proposed §26.22(a)(2)(A) to require a DCTU to contact an applicant, whose service installation requires construction or a line extension, with an estimated completion date and cost estimates within ten calendar days rather than ten work days.

Verizon urged the commission to change the notice requirements of proposed §26.22(a)(2)(A) from ten to 20 days and asserted that additional time is required to ensure that all of the information obtained from the applicant is complete and accurate before estimated charges can be calculated and provided to the potential customer.

AT&T commented against the incorporation of the full text of parties' changes to proposed §26.22(a)(2)(A) into proposed §26.22(b)(2)(A) because of the different obligations imposed on DCTUs as opposed to NCTUs pursuant to current §26.54(c)(1) relating to Service Objectives and Performance Benchmarks, and §26.272(i) relating to Interconnection. AT&T commented that NCTUs are not governed by the current §26.54(c)(1), but, rather, are required by §26.272(i)(3) to make a good faith effort to meet the requirements in that section. However,

AT&T, TTA, and SWBT recommended clarification for proposed §26.22(a)(2)(A) and §26.22(b)(2)(A) that a completed application must be received.

The commission adopts new §26.22(a)(2)(A) to reinstate the current requirement for completing construction or line extensions. The commission makes no changes to the maximum number of days in which a DCTU must contact an applicant whose service installation requires construction or a line extension with an estimated completion date and cost estimates. The commission does not modify the term "application." The time requirements for proposed §26.22(a)(2)(A) and §26.22(b)(2)(A) apply only after the CTU receives sufficient information to begin the process of estimation of cost and completion.

The CLEC Coalition suggested the commission eliminate proposed §26.22(a)(3) because DCTUs are given the ability to require satisfactory credit in §26.24, independently from §26.22, or in the alternative, add the same paragraph to the NCTU portion of the rule.

AT&T disagreed with the CLEC Coalition and submitted that in the absence of an express prohibition or other clear limitation of an NCTU's business practices by federal or state law or regulation, the NCTU retains the discretion to act. AT&T stated the broad language included in proposed §26.22(b)(1) would appear to allow an NCTU to include such a requirement in its terms and conditions of service.

The commission agrees with AT&T that a new paragraph to §26.22 is not required to provide NCTUs the ability to require applicants to establish credit.

§26.23, Refusal of Service

Proposed §26.23(a)(1)(E)(i) and (ii) allow refusal of service to an applicant for indebtedness to any DCTU for tariffed charges. TTA, SWBT, and Sprint recommended a change to allow refusal of service for indebtedness to any CTU. TTA and SWBT commented that allowing for refusal of service only where an outstanding debt is owed to another DCTU would result in increased risk and potential increased costs for both DCTUs and NCTUs and that customers that may be prone to fraudulent activities could avoid payment and still secure service by switching between DCTUs and NCTUs. SWBT commented that in today's competitive environment, an applicant for service with a DCTU may be just as likely to have come from an NCTU as another DCTU. There is no reason to treat indebtedness for local telecommunications service differently depending on whether the debt is owed to an NCTU or another DCTU. AT&T concurred with the recommended changes.

Consumer Commenters not only opposed the recommended changes to expand refusal of service for indebtedness to any CTU, but instead recommended limiting refusal of service for indebtedness only to the DCTU, ETP, or NCTU from whom the applicant is requesting service. Consumer Commenters stated that the proposal to allow refusal of service for a debt to any CTU is too open for fraud by the industry and that when an applicant owes a legitimate debt, that fact will be caught in the normal credit review process.

The commission makes no changes to proposed §26.23(a)(1)(E)(i) and (ii), which reflect current, long standing provisions. The commission does not agree with expanding or limiting these provisions.

SWBT suggested adding a new subparagraph to §26.23(a)(1) to permit the DCTU to refuse service for evidence of theft of service or other acts by the applicant to defraud the DCTU. SWBT pointed out that theft of service and acts to defraud are already grounds for disconnection of service without notice under proposed §26.28(a)(3)(C) and that theft of service also permits a DCTU to backbill for periods exceeding six months under proposed §26.27(a)(3)(C)(i). Although proposed §26.23(a)(1)(D) permits a DCTU to refuse service when it can prove an intent to avoid or evade payment of the outstanding bill of one person by a different person applying for service at the same location, SWBT commented that a DCTU should also be permitted to refuse service on evidence of an applicant's prior theft of service or other acts to defraud the DCTU. Avoidance or evasion of payment owed by another is less egregious than an outright theft or act to defraud committed by the applicant himself. SWBT pointed out that it makes no sense to permit a disconnection of service for evidence of theft one day and require that the same person be provided new service the next day. Consumer Commenters opposed SWBT's suggestion stating it was too broad and open ended and open to abuse. They further commented that this suggestion could be used to refuse serving lower income consumers or those in undesirable areas.

The commission does not agree with SWBT's proposal. If a former customer makes appropriate restitution for the theft of service and reestablishes credit, the DCTU should not deny service.

Proposed §26.23(a)(2)(A) requires a DCTU to send written notice within three working days to any applicant refused service. Verizon requested clarification that the notification time period begins only after the determination is made to refuse service and that the determination need not be made until the applicant has provided all necessary information. Verizon also requested the time period for notification be changed from three work days to seven work days. SWBT recommended revising proposed §26.23(a)(2)(A) to apply only to residential applicants. SWBT pointed out that proposed §26.23(b)(2), the NCTU counterpart to this provision, applies only to residential applicants. SWBT assumed that the inclusion of business customers in proposed §26.23(a)(2) was an oversight.

The commission agrees with SWBT and revises proposed §26.23(a)(2)(A) to require written notification only to residential applicants. Additionally, the commission extends the time requirement to five work days.

Consumer Commenters stated that the standards for refusal of service should be the same for all types of providers. Consumer Commenters indicated that while other sections of the proposed rules prohibit NCTUs from discriminating against customers based on race, location, etc., allowing the providers to refuse service for any reason opens the door to all sorts of potential discriminatory activity, despite the prohibition in the law. Consumer Commenters identified just a few legitimate reasons an NCTU would have to refuse service, which are not applicable to DCTUs and ETPs. Therefore, they recommended proposed §26.23(b)(1) for NCTUs be identical to proposed §26.23(a)(1) for DCTU/ETPs, except that NCTUs may refuse service for the

following additional reasons: lack of facilities or interconnection agreements in the applicant's geographic area, the NCTU does not provide service to the applicant's customer class (i.e., an NCTU that does not serve residential customers), and the applicant is unwilling to accept the NCTU's terms and conditions of service. Another exception proposed by Consumer Commenters is that all references to letters of guarantee apply only to DCTUs and ETPs.

In its reply comments, AT&T opposed Consumer Commenters' proposed approach and language for proposed §26.23(b)(1). AT&T stated that Consumer Commenters' proposal would lead to unintended consequences. For example, the fact that an NCTU has an interconnection agreement with a DCTU does not automatically mean that service can be provisioned to every potential applicant in the DCTU's service area; or, the fact that an NCTU that normally serves only business customers also serves a few residential customers does not mean that the NCTU should then be able to serve all potential residential customers. Rather than try to determine all the potential lawful, reasonable reasons that may exist for an NCTU to deny a request for service, AT&T recommended that the commission reject the approach proposed by Consumer Commenters.

CLEC Coalition also opposed Consumer Commenters' proposal giving examples of other legitimate reasons for NCTUs to refuse service, such as credit unworthiness of an applicant and excessive access charges by a landlord, and indicating the folly of trying to list every legitimate reason for refusal. WORLDCOM also stated it did not agree with Consumer Commenters' attempt to limit an NCTU's ability to refuse service by compiling an exclusive list of conditions. WORLDCOM commented that NCTUs must be allowed to make practical business decisions,

within the confines of existing laws, and that if NCTUs are hamstrung into an effective obligation to serve, they lose their ability to compete and offer the lowest price. WORLDCOM also pointed out that higher risk consumers have options through their carrier-of-last-resort and prepaid service.

The commission makes no change to proposed §26.23(b)(1). The adopted rule provides adequate customer protections. Since some NCTUs do not have an obligation to serve all customers, they should be allowed to develop niche markets as long as they do not violate applicable regulatory requirements. Customers continue to be protected by the availability of a regulated DCTU.

Proposed §26.23(b)(2) requires an NCTU to send written notice within three working days to any residential applicant refused service. The CLEC Coalition commented that CLECs do not have carrier-of-last-resort obligations, and generally have a limited product offering and a limited geographic scope of service. This can result in a greater degree of legitimate service refusal than may occur with an ILEC. For example, a CLEC may receive an unsolicited request for residential service when it offers only business service. Similarly, a CLEC may receive a request for service in South Austin when its facilities do not extend south of Cedar Park. In these cases, there is no discrimination, there are no means by which the applicant may remedy the reason for refusal, and there is no reason for offering a supervisory review of the refusal. Requiring a CLEC to draft and send pointless mail to a consumer is more likely to annoy the consumer than protect him. The CLEC Coalition suggested that, at a minimum, proposed

§26.23(b)(2) be changed to clarify that a CLEC is not subject to this portion of the rule if it does not offer residential service at all.

AT&T recommended deleting proposed §26.23(b)(2). AT&T commented that while AT&T's current practice (in the absence of any commission requirement) is to provide notice to applicants when service was denied due to credit issues, the proposed requirement is not necessary in all instances that may arise. AT&T further commented that the proposed rule, if applied on a blanket basis as proposed, would impose excessive regulation on NCTUs for no apparent consumer benefit.

As stated for proposed §26.23(a)(2)(A), Verizon requested clarification of proposed §26.23(b)(2) that the notification time period begins only after the determination is made to refuse service and that the determination need not be made until the applicant has provided all necessary information. Verizon also requested the time period for notification be changed from three work days to a more reasonable seven work days.

The commission revises proposed §26.23(b)(2) to make the rule applicable only to NCTUs offering residential service, to limit the requirement to provide written notification only when required by the federal Equal Credit Opportunity Act or requested by the applicant, and to extend the time requirement to five work days.

AT&T, WORLDCOM, and CLEC Coalition recommended revising proposed §26.23(b)(3) to clarify that this rule applies to refusal of basic local telecommunications service and not any

service. The recommended change is consistent with the language in proposed §26.23(b)(1) and (2).

The commission agrees with the recommendation and revises proposed §26.23(b)(3) accordingly.

ASCENT commented that proposed §26.23(b)(3)(B) refers only to rates on file with the commission and expressed concern that rates set by customer-specific contracts seem to be ignored. ASCENT requested clarification on this issue and further stated that if the intent of the rules is to capture rates set by contract, then "or those set by contract" should be added to proposed §26.23(b)(3)(B). AT&T did not agree with ASCENT's proposed amendment, since it believes that an NCTU should be allowed to refuse to provide service pursuant to a customer-specific contract for any reason addressed in the contract.

The commission agrees with ASCENT's proposed clarification and revises proposed §26.23(b)(3)(B) accordingly.

Proposed §26.23(b)(3)(E) states that one of the insufficient grounds for refusal of service by an NCTU is the failure of a residential applicant to pay for any charges other than for local telecommunications service, except for long distance charges incurred after toll blocking was imposed. CLEC Coalition commented that this provision is contrary to the principles laid out in proposed §26.23(b)(1) which permits an NCTU to refuse service on any ground that does not violate federal or state law, rules, or regulations. CLEC Coalition stated that, presumably,

proposed §26.23(b)(3)(E) is grounded in PURA §55.013(a), which states: "A provider of basic local telecommunications service may not discontinue that service because of nonpayment by a residential customer of charges for long distance service." However, the proposed rule goes beyond the bounds specified by the Legislature in PURA §55.013 by forbidding an NCTU to consider certain credit information in providing service in the first place (as opposed to disconnecting an existing customer) and further expands the consumer's lack of accountability for failure to pay for telecommunications service from just long distance service to other non-local service such as Internet service or DSL service. If the commission intends to expand the disconnection rule to one that encompasses service initiation as well, at a minimum, it should follow the statutory language and permit refusal for failure to pay any telecommunications charges other than for long distance service.

AT&T concurred with CLEC Coalition's concerns about proposed §26.23(b)(3)(E). AT&T commented that the proposed rewording could have the inadvertent consequence of expanding the scope of protection currently provided to residential customers by current §26.23(c)(5). The current rule was adopted as a result of the rulemaking in Project Number 21030, *Amendments to Subst. R. 26.23, 26.24, and 26.28 Regarding Limitations on Local Telephone Service Disconnections (SB86, PURA §55.012),* to implement PURA §55.012 (SB 86). AT&T recommended revising proposed §26.23(b)(3)(E) to match the language of current §26.23(c)(5). AT&T further commented that the commission already has held that an expansion of the protection afforded by the rules adopted in Project Number 21030 is unwarranted. In Project Number 22130, *PUC Rulemaking to Implement PURA §55.012, relating to Telecommunications Billing*, the commission recently rejected a request to expand the rule adopted in Project Number

22130 so as to prohibit the disconnection of basic local service for the nonpayment of optional local charges.

In the reply comments, Consumer Commenters disagreed with the objections raised by CLEC Coalition and AT&T to proposed §26.23(b)(3)(E) and recommended no change to the proposed language. Consumer Commenters pointed out that while the commission has taken a broad interpretation of local telecommunications service to include optional services, disconnection of local service has never been tied to failure to pay for Internet, cable TV, etc.

The commission adopts proposed §26.23(b)(3)(E) without revision. In Project Number 21030, the commission adopted amendments to customer protection rules to implement PURA §55.012 and §55.013. In that project some telecommunications' industry representatives recommended limiting the rulemaking to the specific language in PURA §55.012 and §55.013. In their view, the rulemaking should have addressed only disconnection of existing customers and not refusal of service for applicants or deposit requirements. In response, the commission stated that it believed the purpose of PURA §55.012 and §55.013 was to sever the link between basic local service and long distance service and to make basic local service more readily accessible. Thus, including applicants and deposits in the rulemaking was consistent with the provisions in PURA §55.012 and §55.013. Furthermore, PURA §17.004(b) grants the commission authority to adopt rules for minimum service standards for all certificated telecommunications utilities relating to customer protection. Failure to pay for services not related to local telecommunications services is a valid reason to deny the services not paid for, but not a valid reason to deny local telecommunications service that has been paid. The commission also notes that the rules

adopted in this rulemaking do not expand §26.25 as adopted in Project Number 22130. Under these rules, basic local telecommunications service may still be refused for the nonpayment of optional local services.

§26.24, Credit Requirements and Deposits

The Texas Council on Family Violence urged the commission to allow a waiver of deposit for residential applicants who are victims of family violence by adding a clause to proposed §26.24(a)(1)(B). Consumer Commenters supported the request made by the Texas Council On Family Violence regarding deposits required of domestic violence victims, who must have access to telecommunications services for their own protection. Many women fail to permanently leave their abusers because of their inability to prepay the initial expenses for rental security deposits, rent, and the initial hook-ups for telephone, electric, and natural gas services. Consumer Commenters further stated that at this critical time of family crises, access to essential 911 services could prove to be a lifesaver.

SWBT commented that it was unclear at the public hearing as to what added protection the proposal by the Texas Council on Family Violence would give to victims of family violence. If the victim of family violence is without sufficient financial resources or credit standing to qualify under existing rules, he/she should be able to qualify for programs such as Lifeline and Link Up. If the victim does not lack financial resources and does have satisfactory credit, then he/she should be able to qualify for service under existing rules. Based on oral comments of the representative for the Texas Council on Family Violence at the public hearing, it appeared that

family violence centers are not aware of the commission's existing programs and do not know how to inform their clients of, or qualify them for, these programs. SWBT submitted that the remedy to the problem raised by the Texas Council on Family Violence is education, not the establishment of a new program. But, if a new program is to be established, SWBT recommended it should apply to NCTUs as well as DCTUs.

The commission agrees with the proposal and adopts new §26.24(a)(1)(B)(iv). Since this requirement is related to the obligation to serve, it applies to DCTUs, but not to NCTUs.

The Office of the Attorney General (OAG) on behalf of affected state agencies, requested proposed §26.24 be revised to specifically preclude CTUs from requiring a deposit from agencies of the State of Texas. The OAG commented that if the purpose of a deposit is to collect a fee, prohibited by Texas Utilities Code Annotated §55.010 (Vernon 1998), then the deposit itself is also prohibited by this statute. In its reply comments, AT&T expressed concern that the addition of such language subsequently could be interpreted to preclude CTUs from offering the State the ability to pre-pay for services or agree to other payment systems that could be mutually beneficial. AT&T, therefore, did not agree that a deposit should be interpreted to be a "fee, penalty, interest, or any other charge for delinquent payment" within the meaning of PURA §55.010. AT&T argued that construing PURA §55.010 in the manner that the State suggests could have unintended consequences not otherwise contemplated.

The commission does not agree with the OAG that the proposed prohibition is necessary and makes no change to proposed §26.24 based on these comments.

Using the same logic described previously regarding proposed §26.23(a)(1)(E), Sprint recommended replacing "DCTU" with "CTU" in proposed §26.24(a)(1)(B)(i)(I), (II), and (IV).

The commission does not adopt the proposed changes to §26.24(a)(1)(B). While a DCTU may consider an applicant's payment history with an NCTU, it should not be required to do so. The commission clarifies that the term "DCTU" in §26.24(a)(1)(B)(i)(I) and (II) includes telecommunications utilities from other states.

SWBT recommended revising proposed §26.24(a)(6)(C)(i)(IV) to clarify that the DCTU can include in estimated annual billings all charges for interLATA toll service provided by the DCTU or its affiliate. Proposed §26.24(b)(2)(B)(i), which is applicable to NCTUs, permits estimated annual billings to include long distance charges for services provided by the NCTU. Because interLATA services cannot be provided by SWBT itself, proposed §26.24(a)(6)(C)(i)(IV) as currently written, places SWBT and its affiliates and parent company at a competitive disadvantage against providers that are not required to establish separate federal Telecommunications Act (FTA) §272 affiliates. SWBT further stated that there is no basis in PURA for such a distinction.

AT&T expressed concern about SWBT's recommendation indicating that granting SWBT's request would undermine the structural separation requirements imposed by FTA §272. While the same structural separation requirement does not apply to other market participants, Congress made a decision that SWBT and other Regional Bell Operating Companies should be subject to

this requirement, and AT&T strongly objected to the erosion of that separation proposed by SWBT. Accordingly, AT&T recommended that the commission reject SWBT's proposed modification.

The commission agrees with SWBT's recommendation and revises proposed §26.24(a)(6)(C)(i)(III) and (IV) accordingly. These revisions do not undermine the structural separation requirements of FTA §272, but simply permit SWBT to collect a deposit for affiliate companies providing service to SWBT's customers.

SWBT recommended revising proposed §26.24(a)(11)(A) to clarify that refunding of deposits and voiding of letters of credit are not required when service is disconnected for non-payment or for theft of service or other acts to defraud. SWBT stated that deposits are meant to be applied to unpaid debts when service is disconnected for non-payment. This is evidenced by proposed §26.24 (a)(11)(B), which specifies that, for residential customers, the deposit is to be applied first to basic local telecommunications service charges. The deposit should also be applied to amounts owing as a result of theft of service or other acts to defraud.

A deposit should be applied to amounts owed as a result of theft of service or other acts to defraud. In fact, a deposit should be applied to any outstanding amount owed upon disconnecting service, regardless of the reason for the disconnection. The commission believes the proposed rules are clear on this point and do not require clarification.

SWBT recommended revising proposed §26.24(a)(12)(A) to clarify that the customer whose service is disconnected for non-payment or theft of service may be required not only to reestablish credit, but also to either pay all amounts owed or execute a deferred payment agreement. SWBT stated that as written, this provision could be interpreted to mean that the applicant could either pay all amounts due or execute a deferred payment plan and reestablish credit.

The commission agrees with SWBT and makes the appropriate clarifying revision to proposed §26.24(a)(12)(A).

Consumer Commenters stated that loose guidelines regarding deposit requirements enable providers to discriminate against and preclude service to customers they do not see as desirable. To that end, both DCTUs/ETPs and NCTUs must be prohibited from subjecting their customers or applicants to unreasonable deposit requirements. However, any standards relating to deposits should not be lessened for NCTUs. PURA §17.004(b) specifically grants the commission authority to apply minimum standards with regard to deposits and credit extensions to all providers. A residential applicant is effectively restricted from having "choice" among providers if NCTUs are not also obligated to consider and honor the various acceptable criteria by which an applicant may demonstrate satisfactory credit. Accordingly, Consumer Commenters recommended making the deposit requirements substantially the same for DCTUs/ETPs and NCTUs. The differences between provisions relating to deposits for DCTUs/ETPs and NCTUs under their recommendation were as follows: requirements regarding letters of guarantee and re-establishment of credit apply only to DCTUs/ETPs and an NCTU may use any appropriate,

generally acceptable means to establish credit, whereas a DCTU/ETP would follow current guidelines.

Consumer Commenters also recommended adding a subparagraph to proposed §26.24(b)(1) to require an NCTU to allow a residential applicant to use good payment history with a DCTU or ETP as a means of establishing credit and require a DCTU or ETP to provide evidence of a former or current customer's payment history. Consumer Commenters stated that many lower income consumers do not have credit cards and they do not have credit histories, good or bad. However, they have very good records paying their utility bills. These consumers should be able to show they are good customers who pay bills on time and the only way to show that may be with a letter of payment history provided by the former monopoly provider. AT&T commented that while Consumer Commenters' proposed additional means of demonstrating credit worthiness may be a useful indicator of creditworthiness, poor credit history for other bills still may reasonably indicate that a deposit is appropriate. NCTUs should be allowed to take all lawful and non-discriminatory information into account when evaluating whether a deposit should be requested of a potential customer. SWCTA urged the commission to allow NCTUs to meet their customer deposit needs in a manner that serve both the NCTUs' and customers' needs.

The commission believes that NCTUs should have flexibility in determining when a deposit is required from a residential applicant and should not be required to follow the residential deposit criteria applicable to DCTUs, who are providers of last resort. Therefore, the commission adopts proposed §26.24(b)(1) without revision.

Consumer Commenters recommended revising proposed §26.24(b)(2)(A) to limit the total deposit amount for NCTUs to one-sixth of estimated annual billings for basic local services. Consumer Commenters stated that proposed §26.24(a)(6)(A) limits DCTUs/ETPs to asking for a deposit no greater than one-sixth of annual billings for tariffed services and that proposed §26.24(b)(2)(A) places a similar ceiling on NCTUs, but refers only to "annual billings" without further qualification or explanation. If services are sold on a bundled or packaged basis, this could be a substantial amount. Therefore, Consumer Commenters recommended the deposit ceiling should be calculated as one-sixth of annual billings for basic local telecommunications service. AT&T recommended rejection of this recommendation. The deposit for local service, including all optional services, should reflect all local services to which the customer is subscribing. To limit the size of the deposit as recommended would significantly limit a provider's ability to protect against bad debt, which would result in increased costs borne by all other paying customers. CLEC Coalition also opposed Consumer Commenters' recommendation and made the following points: there is no similar limitation for DCTU deposits, proposed §26.24(b)(2)(B) provides sufficient protections to residential applicants and customers, and the recommended restriction on NCTUs will promote greater refusal of service and more rapid disconnections.

The commission adopts proposed §26.24(b)(2)(A) without revision. NCTUs should be allowed to obtain a deposit for all services provided.

AT&T commented that language in proposed §26.24(b)(2)(B)(ii) could result in the unintended consequence of interpreting the rule to require three separate deposits. AT&T recommended striking the "basic" in both place in proposed §26.24(b)(2)(B)(ii) and §26.24(b)(6)(B).

The commission clarifies the issue of identification of deposits by types of service. A CTU is not required to collect a separate deposit for each type of service provided. One total deposit may be collected. However, at the time a deposit is required from a residential customer, the deposit amount related to local service and long distance service shall be separately identified. In most cases, the total deposit amount will not require unbundling. For example, once the customer meets the good payment criteria, the entire deposit amount plus interest shall be refunded to the customer. Also, upon termination of all services and payment of the final bill, the CTU shall refund the customer's total deposit amount plus interest on the balance in excess of the unpaid bills for services furnished.

There are two situations where separate identity of the deposit amount by type of service shall be necessary. The first is where a customer terminates or switches a specific service to another provider. For example, if the customer switches long distance service to another provider, the current CTU shall apply the deposit amount related to long distance service to the long distance charges and refund any excess to the customer. This is required by §26.24(a)(11)(A)(iii) for DCTUs and by §26.24(b)(6)(A) for NCTUs. The second situation is where a residential customer's service is disconnected for nonpayment. In this case, the CTU shall ensure that the deposit amount related to local service is applied only to local service charges. This is required by §26.24(a)(11)(B) for DCTUs and by §26.24(b)(6)(B) for NCTUs.

The commission adds new §26.24(a)(6)(C)(ii) and §26.24(b)(2)(B)(ii) to clarify the requirement to separately identify the deposit amount related to each type of service provided.

Consumer Commenters recommended adding two provisions to proposed §26.24(b)(3) for NCTUs related to when interest will be paid and the interest earning time period. The recommended added provisions are similar to those for DCTUs in proposed §26.24(a)(7)(B) and (C).

The commission agrees with Consumer Commenters' recommendations and makes appropriate revisions to proposed §26.24(b)(3).

AT&T commented that proposed §26.24(b)(3)-(6) included a number of detailed requirements regarding the treatment of customer deposits and that AT&T was not aware of any evidence that supports the need to impose such detailed micro-management on NCTUs. Rather than impose such granular requirements, AT&T recommended that more general obligations be established, with the details of implementation left up to the NCTUs. Consumer Commenters disagreed with AT&T's comments.

The commission disagrees with AT&T. PURA §17.004(b) allows the commission to establish minimum service standards for CTUs relating to deposits. The commission believes that proposed §26.24(b)(3)-(6) establish those minimum standards.

Consumer Commenters recommended adding to proposed §26.24(b)(6)(C) that in no event shall an NCTU hold a customer deposit for longer than 12 months, provided the customer has not been late in paying a bill and is not delinquent in the payment of the current bill. Verizon did not agree with the recommended addition, but stated that if adopted, Consumer Commenters proposal should be modified to allow keeping a deposit for a maximum of 13 instead of 12 months. This change would ensure parity with the maximum time allowed for DCTUs. AT&T also commented that Consumer Commenters' proposal is more restrictive than the comparable provision that applies to DCTUs, proposed §26.24(a)(11)(D). AT&T went on to state that there has been no showing that NCTUs are abusing the deposits they receive so as to warrant this proposed micro-management. Thus, AT&T recommended that the commission reject this proposed change.

The commission believes that NCTUs should be allowed to develop their own refund criteria and adopts proposed §26.24(b)(6)(C) without change.

§26.26, Foreign Language Requirements

Consumer Commenters cited PURA §17.004(a)(3) and (9) as stating that all buyers of telecommunications services (regardless of whether served by a DCTU, ETP or NCTU) are entitled to receive information in English and Spanish or any other language the commission deems necessary regarding rates, key terms and conditions, low-income assistance programs, and deferred payment plans. Consumer Commenters further noted that PURA §17.003 permits the commission to require providers to follow rules regarding rates, terms, services, customer rights

and any other information deemed necessary by the commission and that this information be provided in English, Spanish, and any other language as necessary. Consumer Commenters stated that proposed §26.26 does not meet the requirements of PURA and recommended that the Spanish requirements for DCTUs in proposed §26.26(a) also apply to CTUs and ETPs.

TSTCI was concerned that proposed §26.26(a) could impose a burden and significant expense on small ILECs. As drafted, a small ILEC would be obligated to hire a Spanish-speaking person to respond to questions, billing inquiries, service orders, etc. as well as develop information in Spanish. TSTCI proposed revising this provision so that it is consistent with proposed §26.31(b)(2)(B), and stated the foreign language requirements in that provision are reasonable and would not result in small ILECs having to go to the expense of having a Spanish speaker on staff when there may not be a need. TSTCI also noted consistency in Spanish language requirements among the rules would better serve the interests of utilities and customers.

Verizon and the CLEC Coalition opposed Consumer Commenters' proposal as it imposes unnecessary burdens on NCTUs and may discourage some new entrants from marketing to niche groups that speak a language other than English or Spanish. The CLEC Coalition noted the proposal would require all NCTUs, regardless of size, to hire a Spanish-speaking person for billing inquiries and repair requests, and to translate written materials into Spanish. The CLEC Coalition asserted this requirement is already in place in the commission's proposed rule if the NCTU markets in Spanish or any other language.

AT&T commented that proposed §26.26(b) is ambiguous and, if read in its most onerous manner, would apply if any part of any advertisement, promotion, or marketing effort is in any language other than English. Even if the advertisement, promotion, or marketing occurred only in Texas, the mere inclusion of any other language other than English should not trigger this additional obligation. Verizon shared the concern as to the circumstances under which the foreign language requirement is triggered.

Consumer Commenters recommended the commission add language to proposed §26.26(a)(2) that would require a terms of conditions of service statement be available in Spanish and English.

Verizon commented that the intent of the proposal of Consumer Commenters is unclear and imposed additional and unnecessary regulatory burdens on all CTUs without adding any benefit to customers.

Consumer Commenters recommended the same exception to the Spanish language rule as exists today remain and the same standards regarding information in Spanish apply to all CTUs and ETPs. However, Consumer Commenters recommended an exception for NCTUs who submit a sworn affidavit from a company officer stating the NCTU markets only in English.

AT&T, the CLEC Coalition, and Verizon opposed Consumer Commenters' provision for waivers. AT&T replied that the proposed amendments would subject NCTUs to more onerous burdens and restrictions on their marketing than would apply to DCTUs and ETPs because only if the NCTU swears that it does not market its service in any language other than English can it

receive a waiver, whereas a lesser standard would be applied to DCTUs and ETPs. AT&T stated such a result is unwarranted, anti-competitive, and should be rejected. Verizon noted the waiver provision failed to take into account DCTUs that may be able to demonstrate good cause and NCTUs that may be able to demonstrate just cause because they market exclusively to groups that speak a language other than English or Spanish. The CLEC Coalition saw no benefit to Consumer Commenters' proposal for waivers because the commission has adequately addressed the situation.

Verizon supported the concerns expressed by TSTCI and recommended a waiver provision be added for those DCTUs that serve counties that meet the requirements of proposed §26.26(a) but for whom less than 10% of their access lines serve customers that are Spanish speaking.

AT&T commented that, although the commission's proposed rule could require language translations only on request, a CTU still would incur the cost to prepare these translations and have them available. AT&T suggested this subsection be omitted or significantly limited in its application, such as applying only to a particular advertising, promotional, or marketing effort conducted in Texas when a significant percentage (30% or more) of the effort has been translated into another language. In the alternative, AT&T suggested that this proposed rule apply only when the other language is Spanish.

PURA is clear that all CTUs must provide essential information in both English and Spanish and any other language the commission deems necessary. The commission finds that a CTU shall provide key information in Spanish, upon customer request. If a CTU is conducting any

advertisement, promotions, or marketing for a service or product in another language, then all the information in §26.26 related to that service or product must be provided in the language in which a CTU is marketing, upon customer request. The commission revises proposed §26.26 accordingly and clarifies that the key terms and conditions contained in this rule include the terms and conditions of service referenced in §26.31.

§26.27, Bill Payment and Adjustments

CACC suggested adding language to proposed §26.27(a)(1) to clearly state the difference in the grace period for governmental entities and political subdivisions as specified in the Texas Government Code Annotated §2251 (Vernon 1999 Pamphlet). CACC also recommended clarifying proposed §26.27(a)(2) to distinguish the percentage amount and application of penalties for delinquent bills per type of customer and lay out exemptions for state entities and political subdivisions.

OAG supported the language in proposed §26.27(a)(2) and noted the language was consistent with PURA §55.010.

The commission finds it is unnecessary to specify in proposed §26.27(a)(1) the grace period allowed for governmental entities and political subdivisions because proposed §26.27(a)(2) prohibits any penalty from being applied to governmental entities due to delinquent payment of a bill. Parties directly affected by §26.27(a)(2) support the language in the proposed rule. Therefore, the commission determines changes to proposed §26.27(a)(1) and (2) are not

necessary regarding this issue. However, the commission does make changes to proposed (a)(2) as discussed in the commission's response to comments on proposed subsection (b)(2).

CACC recommended that §26.27(a)(3)(B) be revised to require overbilling corrections be made for the entire period of the overbilling and that itemized billing records be provided by the utility to ensure that end.

AT&T disagreed with CACC's recommendation and stated that most customers accept a correction for overbilling without needing or wanting these records as proof that the CTU has properly made the necessary corrections. Consequently, this requirement would impose significant expense and burdens on CTUs with little or no customer benefit.

Section 26.25(d)(3) currently requires CTUs to retain billing records for a minimum of two years. Also, proposed §26.27(a)(3)(B)(i) and §26.27(b)(3)(A)(i) require a refund for the entire period of the overbilling. The refund period may exceed two years if either the CTU or the customer has appropriate documentation. Consequently, the commission declines to make the changes proposed by CACC.

Ben Sanford & Associates, Inc. and PBX suggested proposed §26.27(a)(3)(B) and proposed §26.27(b)(3)(A) be revised to include refund of overbilling if the CTU bills for services not provided and that provisions of service should be defined as service terminated and properly labeled at a legal demarcation point.

The CLEC Coalition and AT&T found the definition of service proposed by Ben Sanford & Associates, Inc. and PBX faulty in several ways and noted the problems to be addressed appeared to involve complex wiring, and whether a carrier is terminating at what a building owner would consider to be a proper demarcation point. AT&T recommended the commission reject this suggested change for services not provided since this issue is already addressed by the commission's cramming rule, §26.32(f)(1). The CLEC Coalition asserted it should not be addressed as an issue of first impression in this rulemaking unless the commission republishes the rule and suggested, instead, that Ben Sanford & Associates, Inc. and PBX request a new rulemaking or bring an individual complaint against any carrier they believe is charging for service not terminated and properly labeled at a legal demarcation point.

Due to the lack of clarity in identifying the problem to be addressed, and the late introduction of this issue, the commission declines to adopt the amendments proposed by Ben Sanford & Associates, Inc. and PBX.

SWBT suggested revising proposed §26.27(a)(4)(B) to require DCTUs to inform customers of the commission's complaint procedures only if the DCTU does not resolve the dispute. AT&T recommended a similar provision in proposed §26.27(b)(4)(B) be omitted. AT&T commented that in the vast majority of situations, if a customer calls an NCTU with a dispute about a bill, this dispute will be promptly resolved to the customer's satisfaction and there is no need for the customer to receive a lengthy notice regarding the commission's complaint procedures. AT&T asserted that proposed §26.27(b)(4)(B) would impose unwarranted regulatory burdens on

NCTUs and would be an inconvenience to customers. The CLEC Coalition agreed. SWBT and AT&T noted existing §26.27(f) requires such notification only if the dispute is not resolved.

The commission agrees with the parties and revises proposed §26.27(a)(4)(B) and §26.27(b)(4)(B) to require notification to customers of the commission's complaint procedures only if a dispute is not resolved to the customer's satisfaction.

Consumer Commenters stated proposed §26.27(b)(1) allowed NCTUs to set their own bill payment standards, with no minimum. Consumer Commenters recommended the minimum 16 days to pay a bill apply to all CTUs and ETPs. They contended that most consumers will assume they have lost the existing protection of 16 days to pay their bill and will not choose a competitor based on the notion that they will have less time to pay a bill. Consumer Commenters noted that a consumer can always pay a bill more quickly than the minimum deadline and that competition should result in ways that make it easier and more convenient for consumers to pay their bills, not more burdensome than current law.

The commission agrees with Consumer Commenters and finds that the right to have a minimum of 16 days to pay a bill is a necessary customer protection. Therefore, the commission revises §26.27(b)(1) to require that an NCTU bill have a due date that is at least 16 days after issuance.

WORLDCOM commented that the requirement in proposed §26.27(b)(1)(B) that the bill due date not fall on a holiday or weekend, should be deleted. WORLDCOM and AT&T stated that prohibiting the original bill due date from falling on a holiday or weekend is unjustified and

unreasonably burdensome on NCTUs and would require carriers to reconfigure their automated billing systems incurring huge system development expenses, without adding any real protection to consumers.

AT&T asserted that CACC's comments regarding proposed §26.27(a) raised the issue of instances where putting an actual due date on a bill rather than a period by which payment is due may result in a conflict with other requirements, such as Texas Government Code §2251.021. AT&T further commented that to the extent the commission perceived a need to prohibit disconnection of service on these days, this issue has already been addressed in proposed §26.28(a)(5) and proposed §26.28(b)(5). AT&T suggested the same goal could be accomplished by adopting a rule that tracks the provisions of the Code Construction Act (Texas Government Code §311.014(b)) which states, "If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday." This approach would require NCTUs to provide a payment due date on their bills, but would ensure that payments would not be late and service would not be impacted if due but not paid on a weekend or holiday. AT&T noted this approach is consistent with existing state law and is similar to the rule all CTUs abide by when calculating filing deadlines at the commission pursuant to Procedural Rule §22.4(a) relating to Computation of Time. AT&T stated the above proposal reflected a more balanced approach to addressing this issue without imposing onerous and burdensome regulation and development expenses on NCTUs.

The CLEC Coalition agreed with AT&T's recommendation. In the alternative, the CLEC Coalition recommended CTUs have the option of including such a statement in their terms and conditions so that billing systems do not have to be modified.

Consumer Commenters stated that if the due date of a bill falls on a holiday or weekend, the rules should require that the bill is not actually due until the next business day and all customers should have the current 16 days to pay bills.

AT&T recommended the commission adopt its proposed amendments to §26.27(b)(1) and limit its application to residential customers only or explicitly allow NCTUs to provide periods by which payment are due rather than explicit dates. AT&T noted that for some non-residential customers, the payment due date is a set period of time from the date the bill is issued or the date the customer receives their bill. AT&T recommended the commission not prohibit such arrangements nor require NCTUs to develop new non-residential billing systems.

The commission revises proposed §26.27(b)(1)(B), now §26.27(b)(1)(D), to allow the bill to reflect a due date that falls on a holiday or weekend if there is a statement on the bill or in the terms and conditions of service that informs customers that the bill due date is extended to the next work day. The commission determines the requirements for a bill due date should apply to business and residential customers.

Consumer Commenters agreed with proposed §26.27(b)(2) and the ceiling on late fees as necessary to prevent CTUs and ETPs from imposing unconscionably high fees and proposed that

late fees be clearly disclosed and expressed as an annual percentage rate (APR) to inform customers of the high cost of tardiness in the payment of telephone bills. AT&T recommended the commission reject this recommendation as it is not clear how this rate would be calculated since it is proposed to be assessed as a one-time fee, and receiving this alternative representation of the penalty could be more confusing to customers.

ASCENT requested the commission reconsider the one-time limit application of the penalty in proposed §26.27(b)(2), as residential customers who find themselves unable to pay their local telephone bills should contact their providers to discuss alternative payment options. ASCENT commented the state should foster proactive behavior of residents rather than cap the penalty when bills are simply not paid and balances are carried over from month to month. AT&T concurred. Consumer Commenters asserted there should be no double dipping on fees to consumers for delinquent payment and the fees should be applied only once to a balance.

AT&T recommended proposed §26.27(b)(2) be deleted or revised to provide that an NCTU may assess not more than a lawful rate of interest on delinquent bills. AT&T asserted that such a revised requirement would provide better customer protection as the maximum monthly interest that could be assessed would be 1.5% of the past-due amount. AT&T expected that the majority of past-due customers will be past due for only one or two months and the total interest assessed would be less than the one-time penalty proposed in this rule. The CLEC Coalition agreed with AT&T's proposal and noted the recommendation would permit NCTUs to continue using their current billing systems without costly modifications, would not abrogate existing contracts, and would benefit consumers because a 5.0% one-time penalty is in excess of the normal legal rate.

The CLEC Coalition and AT&T commented that if the commission finds it necessary to restrict NCTUs' imposition of late charges, then it should limit the restriction of proposed §26.27(b)(2) to residential customers and small business customers. AT&T noted it was not aware of any indication that non-residential customers lack the ability to evaluate for themselves whether the late payment penalty provisions of an NCTU warrant choosing another provider's service and the commission should not impose additional regulations where no market defects are present.

The CLEC Coalition noted that NCTUs currently have varying delinquency policies memorialized in their contracts with their customers, and stated that if the commission decided to adopt proposed §26.27(b)(2) and limit NCTUs' imposition of late charges, then the commission should specify that the terms of existing contractual relationships will govern until the contracts are renewed. AT&T supported this recommendation.

The CLEC Coalition and AT&T suggested the commission be clearer in its language for both DCTUs and NCTUs as to what constitutes a "penalty." The CLEC Coalition noted confusion in the industry as to whether a "late payment charge" is equivalent to a "penalty" by citing the residential telephone bills of Southwestern Bell Telephone Company which state: "If charges greater than $10.00 are carried over to your next bill, a late payment charge of $2.95 will apply." Consumer Commenters agreed that the commission should clarify that late fees, penalties, etc., are the same.

The commission deletes the 5.0% limit on penalties for delinquent bills from proposed §26.27(a)(2) and §26.27(b)(2). PURA §58.152 allows an electing company under Chapter 58, Incentive Regulation, to set the price for any non-basic service. PURA §58.151 classifies late payment charges as non-basic services. Since the commission may not cap a charge for non-basic service of an electing company, it would be inappropriate to establish a cap for competitors. This should not be read to permit a CTU's violation of generally applicable credit laws.

ASCENT expressed concern that proposed §§26.23(b)(3)(B), 26.27(b)(3)(A), 26.27(b)(3)(B), and 26.28(b)(4)(A) refer only to the rates on file with the commission and ignore rates set by contract, such as customer-specific contracts. ASCENT requested that the commission clarify whether it intends to subject rates set by contract to these rules. ASCENT commented that if rates set by contract are intended to be captured in these rules, then the relevant provisions should be revised by adding "or those set by contract."

AT&T recommended the commission not apply such requirements to customer-specific contracts. The issue of how overbillings and underbillings will be handled should be left to the NCTU and the customer to address in contract negotiations.

The commission agrees with ASCENT that the provisions regarding over and underbilling should apply to customer-specific contracts. Therefore, the commission revises proposed §26.27(b)(3)(A) and (B) accordingly. The commission also revises proposed §26.23(b)(3)(B)

and §26.28(b)(4)(A) to address customer-specific contracts in the refusal of service and suspension and disconnection rules.

AT&T recommended that it be up to each NCTU to address how to care for a customer in the event of an overbilling, rather than mandating in proposed §26.27(b)(3)(A) that NCTUs pay interest on overbillings. AT&T asserted that in the absence of such flexibility, the commission would effectively limit the benefits that customers otherwise would have received in the event of an overbilling. However, if the commission mandates interest be paid, NCTUs may incur significant system development expenses to enable that functionality. AT&T asserted its need for flexibility to respond to competitive pressures.

Consumer Commenters noted several recent class action lawsuits involving overcharges for telecommunications services have been settled by providing the customer additional new services, for free, for some period of time resulting in no actual compensation to the customer, but lure customers into adding more services. Consumer Commenters asserted overbilling should be remedied through refunds or credits, including interest, as proposed in the proposed rule.

The commission establishes minimum standards for overbilling in proposed §26.27(a)(3)(B) and §26.27(b)(3)(A). These standards do not infringe upon the flexibility of a CTU to exceed the minimum standards in response to competitive pressures to retain a customer. The commission revises the proposed §26.27(a)(3)(B)(iii) and §26.27(b)(3)(A)(iii) to clarify this point.

ASCENT stated that because an NCTU is setting its retail rates based on the rates the NCTU must pay to its wholesale provider (the DCTU), limits on an NCTU's rights to backbill should coincide with the limits that DCTUs have to backbill NCTUs. ASCENT recommended additional language in proposed §26.27(b)(3)(B) to limit a DCTU's ability to adjust an NCTU's billing to the same time frame as an NCTU is given for billing adjustments to its retail customers, or alternatively, allow an NCTU to pass-through to its retail customers, adjustments in billing imposed by a DCTU within three months of the DCTU's billing adjustment to the NCTU.

AT&T concurred with ASCENT's recommendations and offered an alternative, revising proposed §26.27(b)(3)(B) to allow backbilling for up to a year. This longer period of time would allow sufficient time for NCTUs to backbill their retail customers in instances of DCTU backbilling of the NCTU for wholesale services. AT&T noted its current interconnection agreement with SWBT allows SWBT to backbill AT&T for wholesale services for up to 12 months.

The commission determines it is not appropriate to link DCTU wholesale interconnection agreements to NCTU retail customer agreements. The rates and responsibilities between an NCTU and its retail customer are independent of those between an NCTU and its wholesaler (DCTU). Therefore, the commission makes no revision to proposed §26.27(b)(3)(B) based on these comments.

The CLEC Coalition noted that unlike DCTUs, many NCTUs have not developed deferred payment plans and suggested proposed §26.27(b)(3)(B)(iii) be limited to underbilling of residential customers due to the unreasonable regulatory burden in the case of NCTU business customers who may routinely pay thousands of dollars per month for service.

AT&T stated that the cost of developing and offering deferred payment plans for residential customers would also be an unreasonable regulatory burden, if the NCTU serves a small number of residential customers compared to a DCTU. AT&T noted that a mandatory requirement to provide deferred payment plans could have the unintended consequence of mandating compliance with certain disclosure and bill format requirements pursuant to the federal Truth in Lending Act and the Fair Credit Reporting Act that otherwise would not be applicable. AT&T did not object to offering customers payment plans in situations of underbilling which track the concepts the commission has proposed. However, a deferred payment plan may be interpreted to mandate a particular accounting treatment and customer billing methodology that a CTU does not always utilize. To incorporate a more flexible approach, AT&T recommended this subpart be revised to allow other appropriate options.

The commission revises §26.27(b)(3)(B)(iii) to require an NCTU to offer a payment plan, which is not required to meet the provisions of a deferred payment plan in proposed §26.27(a)(7).

AT&T noted proposed §26.27(b)(3)(B)(iv) appears to require interest to be charged in certain situations. AT&T proposed that §26.27(b)(3)(B)(iv)(II-III), which reference the way interest is compounded and when it accrues, be more flexible.

The commission does not require charging interest to customers under any circumstances. Proposed §26.27(a)(3)(C)(iv) and §26.27(b)(3)(B)(iv) allow interest to be charged only when underbillings result from theft of service. CTUs are not allowed to charge interest on underbillings resulting from any other reason. The commission makes clarifying revisions to proposed §26.27(a)(3)(C)(iv) and §26.27(b)(3)(B)(iv).

AT&T recommended deleting proposed §26.27(b)(5) which would require that each and every potential alternative payment program and payment assistance option be disclosed to each and every customer. The proposed requirement would eliminate AT&T's current flexible approach and require AT&T to develop a restricted list of programs with defined and rigid eligibility requirements, restricting innovation and better customer service. AT&T noted elimination of this language would not prevent the customer and customer representative from discussing these issues if any programs could be helpful to the customer. Additionally, AT&T noted that pursuant to proposed §26.31(a)(4)(C)(vi), if adopted as proposed, the NCTU already will have provided notice to the customer regarding the availability of alternative payment programs or payment assistance, and there does not appear to be a need to mandate this disclosure again.

The commission determines disclosure of available assistance programs are most appropriately made when a customer contacts an NCTU indicating an inability to pay a bill or need of assistance with payment. While disclosure is also required in the customer rights information, a customer contacting an NCTU indicating a need for this information, should be provided the information. However, the rule does not limit the NCTU's flexibility in developing payment

plans. The commission clarifies proposed §26.27(b)(5) so that an NCTU is required to inform a customer of any programs available to that customer and not all programs the NCTU has available.

Consumer Commenters recommended proposed §26.27(b)(5) require NCTUs that offer alternative payment programs or payment assistance to provide customers the same notice required by proposed §26.27(a)(7)(E)(i).

AT&T recommended the commission reject Consumer Commenters' proposal as alternative payment agreements can be worked out over the phone without a formal written agreement. The result of Consumer Commenters' proposal would require AT&T to implement yet another regulatory process, incur additional costs for no reason or benefit to customers, and limit the flexibility AT&T currently is able to use with its customers.

Commission rules currently do not require DCTUs to produce a formal written agreement for every payment plan it offers. The notice referenced by Consumer Commenters is used only for deferred payment plans. The commission does not believe it is appropriate to impose this requirement upon all NCTUs payment plans. Therefore, the commission does not revise proposed §26.27(b)(5) to include the notice requirements in proposed §26.27(a)(7)(E)(i).

AT&T recommended proposed §26.27(b)(5) be clarified to specifically exclude non-residential customers from its application.

The commission determines that if a business customer contacts an NCTU regarding payment assistance and such assistance is available, this information should be disclosed to the business customer.

Consumer Commenters noted current rules specify procedures, including customer refunds, that should be followed in the event of a service interruption and stated that procedures regarding service interruptions are a basic customer protection that should be addressed under the general provisions of PURA. Consumer Commenters recommended imposing the same procedures and refund requirements on NCTUs who own or control the facilities serving the customer. However, if the customer of an NCTU is served by facilities owned or controlled by a DCTU, no refund shall be required unless the NCTU receives a refund or compensation from the DCTU due to the service interruption. In addition, Consumer Commenters recommended that a customer who has experienced an interruption of service for more than 24 hours or who has experienced service interruptions totaling 24 hours during any one month period, regardless of who owns or controls the facilities serving that customer, should be entitled to rescind any contract or terms of service agreement with the NCTU without penalty. Consumer Commenters asserted that this recommendation balances the fact that NCTUs may not be directly responsible for or able to correct service interruptions on DCTU facilities with the customer's expectation of uninterrupted service.

AT&T and TTA recommended the commission reject this recommendation and stated once customers have received a refund for lost service, at a minimum, they have been made whole. AT&T asserted that to grant a customer an automatic right of rescission, even if the NCTU was

not at fault, would provide significant perverse incentives in the market as the underlying carrier and competitor to the NCTU would be rewarded for an outage of greater than 24 hours by regaining a previously lost customer. TTA stated there is no reason to apply the requirements to NCTUs as NCTUs have every incentive to provide the best, most reliable service to their customers because each of their customers has the option of taking his or her business elsewhere. TTA urged the commission to allow NCTUs to continue using flexible methods for working with customers during hiccups in their systems.

The commission determines that it is not appropriate to impose refund requirements on NCTUs for service interruptions. This issue is more appropriately addressed in the competitive marketplace as a customer can choose another provider if the customer is not satisfied with service. The commission also finds it is not appropriate to link wholesale (DCTU) issues to NCTU retail customers. The quality of service received by an NCTU from its wholesaler (DCTU) should not nullify agreements between an NCTU and its retail customer.

§26.28, Suspension or Disconnection of Service

TTA and SWBT recommended revising proposed §26.28(a)(2)(C) to permit disconnection of non-residential service for the nonpayment of long distance charges pursuant to billing and collection contracts.

The commission agrees with TTA and SWBT and revises proposed §26.28(a)(2)(C) accordingly.

SWBT recommended revising proposed §26.28(a)(2) and (7) to clarify that monthly statements for prepaid month-to-month services, which inform the customer each month of the service's expiration date and the charges due to continue service for the coming month, constitute sufficient notice for disconnection. SWBT stated that because customers who subscribe to SWBT's Prepaid Home Service are notified each month, at least ten days prior to service expiration, that their service will be terminated unless they pay for the coming month's service on the service expiration date, these customers receive sufficient notice each month to permit disconnection under the disconnection-with-notice rules. NALA/PCA also expressed concerns about the proposed notice provisions for NCTUs and their impact on prepaid local services. NALA/PCA recommended adding a paragraph to proposed §26.28(b) exempting prepaid local exchange service from the notice requirements of this subsection. Consumer Commenters urged the commission to look at the proposal for clarification on prepaid service in the context of the entire set of rules. They further commented that if the bill is to also serve as the disconnection notice, it must contain all appropriate information.

The commission recognizes the differences between traditional continuing local telecommunications service and prepaid local telephone service. Nevertheless, the commission believes that separate notice should always be given before disconnecting service to any customer for nonpayment. Including a disconnection notice as part of a bill does not provide adequate customer protection. For example, a customer of prepaid service may pay a bill on time, but for whatever reason, the service provider does not properly record the payment. If separate disconnection notice were not provided to the customer, service would be disconnected

without giving the customer the opportunity to correct the situation and avoid disruption of service. Therefore, the commission does not adopt the proposals from SWBT and NALA/PCA.

Consumer Commenters recommended revising proposed §26.28(a)(4)(C) and §26.28(b)(4)(C) to prohibit disconnection for failure to pay disputed charges until a final determination is made by agreement of the parties or an administrative or judicial order. AT&T recommended that the commission reject these proposed changes. AT&T stated that the addition of these requirements would serve only to protect customers who game and abuse the system by refusing to pay lawful charges and continuing to raise meritless protests and subsequent commission complaints in an effort to prevent the final disconnection of their service. AT&T claimed that the result will be a loss to all lawful paying customers as they must foot the bill for those who pursue such abuses.

The commission does not agree with the recommended changes to proposed §26.28(a)(4)(C) and §26.28(b)(4)(C), which include the language in current §26.28(d)(4). If a customer does not agree with the company's determination of the disputed charges, the customer has several options to pursue, which are included in §26.30.

The proposed rules omitted one of the prohibited reasons for suspension or disconnection in the current §26.28(d)(2), which states: "failure to pay for a different type or class of utility service unless charges were included on the bill at the time service was initiated." The commission adds this reason as new §26.28(a)(4)(B) and §26.28(b)(4)(B).

Consumer Commenters recommended revising proposed §26.28(a)(7)(B) and §26.28(b)(6)(B) to prohibit suspension and disconnection notices from being delivered electronically. Consumer Commenters stated that PURA, as implemented by the commission rule, has required written notification on paper for disconnection of service. To permit online disconnection notices would be to take away an existing consumer protection when the Esign law does not require it. The Congressional Record indicates that the intent of the Esign law is not to remove existing consumer protections. Verizon and AT&T suggested that the commission not adopt rules that limit disconnection notices to only those written on paper. Verizon commented that customers who receive bills and make payments electronically should be able to send and receive any billing related correspondence in a similar manner if the provider offers that choice and the customer understands that choice. AT&T commented that Consumer Commenters advocate that the commission deny Texas consumers the very benefits of this Act before it is even able to take effect. Rather than prohibit Texans from voluntarily choosing to conduct as much of their business over the Internet using electronic media as recommended by Consumer Commenters, AT&T recommended that the commission grant Texas consumers this freedom to freely choose how they want to conduct their business. Under the new law, a person may not be forced to accept electronic records. Indeed, a consumer must affirmatively consent to receive such records electronically, and, even after providing such consent, may still receive paper copies of such records.

The commission believes that all suspension and disconnection notices must be a separate mailing or hand delivery unless a customer specifically requests that notice be provided electronically. The commission does not agree that a notice may be sent electronically in lieu of

a mailing or hand delivery without customer approval. The commission also does not agree that an electronic transmission should be prohibited if used in conjunction with a mailing or hand delivery. The commission revises proposed §26.28(a)(7)(B) and §26.28(b)(6)(B) to allow electronic notice if requested by the customer.

Consumer Commenters proposed that the same procedures for suspension or disconnection of service should apply to all carriers, DCTUs, ETPs and NCTUs. Proposed §26.28(b)(2) permits an NCTU to suspend or disconnect basic local telecommunications service for any legal reason that is clearly disclosed in the customer's terms and conditions of service. Consumer Commenters found this phrase overly broad, vague and believe it leaves open the door to fraud, abuse, and/or discrimination. Consumer Commenters stated that the legitimate reasons for suspension or disconnection are limited and should therefore be enumerated. Consumer Commenters recommended revising proposed §26.28(b)(2) to treat DCTUs/ETPs and NCTUs in essentially the same manner. Under their proposal an NCTU can also disconnect because the NCTU is no longer offering service, is no longer offering service to the customer's customer class, or is no longer offering service to the geographic area. AT&T commented that Consumer Commenters' proposal would provide fewer bases for suspending and disconnecting services than the commission proposed be allowed for DCTUs. AT&T further stated that for the same reasons it discussed regarding proposed §26.23(b)(1), the commission should reject these proposed modifications. CLEC Coalition also opposed Consumer Commenters' proposal stating that the proposal omits several reasons that NCTUs may disconnect service, demonstrating why imposing limits is unworkable. The CLEC Coalition further commented that NCTUs do not have a statutory obligation to serve all customers. Consequently, it is appropriate to limit the

rights of DCTUs to disconnect, but inappropriate to regulate NCTUs beyond requiring notice and compliance with the law.

The commission makes no change to proposed §26.28(b)(2). Since NCTUs do not have an obligation to serve all customers, they should be allowed to develop a disconnection policy as long as they do not violate applicable regulatory requirements.

Consumer Commenters recommended applying proposed §26.28(a)(6) for DCTUs regarding disconnection of the ill and disabled, to all types of providers. They indicated there is no clear reason why NCTUs are exempt from this provision.

The commission believes this provision relates to the obligation to serve and should apply only to DCTUs.

Proposed §26.28(b)(4)(D) prohibits disconnection for failure of a residential customer to pay for any charges other than those for local telecommunications service or those for long distance charges incurred after toll blocking was imposed. Sprint recommended deleting this provision because many NCTUs will not offer stand-alone local service, unbundling services to a customer is a complicated process that consumes resources, and this creates an unnecessary burden to new NCTU entrants when other options are available to customers for stand-alone local service. The CLEC Coalition and AT&T commented that the proposed rule expands the scope of protection currently provided to residential customers by current §26.28(d)(5), which was adopted as a result of the rulemaking in Project Number 21030 to implement PURA §55.013(a). Consumer

Commenters did not agree with the CLEC Coalition and AT&T that the proposed rule would expand the prohibition on local service disconnection for residential customers. They pointed out that local service has never been tied to failure to pay Internet, cable TV, etc. Consumer Commenters also took exception to Sprint's comments regarding bundled services. Consumer Commenters pointed out that an NCTU has received certification to provide basic local service and should be required to provide a customer stand-alone basic service to a customer if appropriate payments are made.

The commission adopts proposed §26.28(b)(4)(D) without modification. In Project Number 21030, the commission adopted amendments to customer protection rules to implement PURA §55.012 and §55.013. Furthermore, PURA §17.004(b) grants the commission authority to adopt rules for minimum service standards for all certificated telecommunications utilities relating to termination of service. Failure to pay for services unrelated to local telecommunications services is a valid reason to terminate the services not paid for, but not a valid reason to disconnect local telecommunications service that has been paid. The commission also notes that the rules adopted in this rulemaking do not expand §26.25 as adopted in Project Number 22130. Under these rules, basic local telecommunications service may still be disconnected for the nonpayment of optional local services.

Proposed §26.28(b)(5) prohibits, subject to limited exceptions, the suspension or disconnection of service on holidays or weekends, or the day before a holiday or weekend, unless NCTU personnel are available on those days to take payments and reconnect service. AT&T and WORLDCOM recommended expanding the exceptions to this prohibition to include instances in

which service may be terminated without notice, which are identified in proposed §26.28(b)(3). Consumer Commenters objected to AT&T's and WORLDCOM's suggestion.

The commission agrees with the recommendation and makes appropriate revisions to proposed §26.28(a)(5) and §26.28(b)(5).

Proposed §26.28(b)(6)(D) requires suspension and disconnection notices be in English and Spanish. AT&T requested a revision so that a Spanish version would not be required but would be available upon request. AT&T stated that it utilizes a national system to provide these notices and does not provide these required notices in English and Spanish throughout the nation. AT&T indicated that it did not object to providing a customer a notice in Spanish when AT&T normally does business with the customer in Spanish, and that this is AT&T's practice. However, AT&T was not aware of a need to provide to any or all customers both translations. To provide both translations to any and all customers, regardless of their need or desire for the translations, would cause AT&T to incur additional development expense for no apparent customer benefit. Consumer Commenters objected to AT&T's recommendation stating that eliminating the current Spanish language requirement was out of touch with the reality of demographics in Texas.

The commission disagrees with AT&T and adopts proposed §26.28(b)(6)(D) without revision.

WORLDCOM recommended deleting proposed §26.28(b)(8) since it does not currently have the technical capability to toll block for another provider.

Proposed §26.28(b)(8) reflects current §26.28(j), which was adopted in Project Number 21030. In that project the commission responded to WORLDCOM's concerns indicating that it was not the intent of the commission to require all local service providers to obtain a standard toll blocking capacity. Instead, the commission required that within a local service provider's technical capability, it implement toll blocking in a consistent, reasonable, and nondiscriminatory manner. If an NCTU cannot initiate a toll block, then it should refer the request to the local exchange company that can implement the toll block. The commission revises proposed §26.28(b)(8)(B) to clarify this point.

Proposed §26.28(a)(10) and §26.28(b)(9) require a DCTU or an NCTU to release a customer's telephone line to the customer's preferred carrier within five days of receiving a request. In the initial comments, Verizon and AT&T expressed concern about this provision stating that NCTUs do not have the technical capability to release lines and the provision encourages fraudulent consumer behavior by supporting customers who switch carriers to avoid past due accounts. In the reply comments, SWBT and AT&T suggested that the variables are many and complex and should be further explored by all interested parties, DCTUs, NCTUs, and consumers, before a rule is adopted.

WORLDCOM strongly urged that the commission clarify that the term "line" in proposed §26.28(a)(10) and §26.28(b)(9) includes the telephone number. WORLDCOM further stated that if the term "line" excludes the telephone number, the intended effect of the line release requirement is lost because customers avoid switching if they lose the telephone numbers by

doing so. WORLDCOM commented that smooth migration benefits customers and competition and requested that the commission implement a policy to require the release of the telephone number with the release of the line.

The commission continues to receive complaints about local service providers who hold a customer's line hostage until they receive payment. The intent of proposed §26.28(a)(10) and §26.28(b)(9) was to ensure that a current provider does not block a customer from switching to another provider and takes all necessary actions within its technical capabilities to ensure a smooth transfer of providers without disruption in service. The commission agrees with WORLDCOM that the requirement to release the line includes the release of the telephone number for switches involving current or suspended customers. The commission adopts proposed §26.28(a)(10) and §26.28(b)(9) with clarifying revisions. The commission agrees that much additional work is needed to improve the current local telecommunications service switching process and is pursuing this outside of this rulemaking.

§26.30, Complaints

AT&T recommended proposed §26.30(a)(1) only require CTUs to provide customers notice of the means by which complaints will be received rather than mandate each means by which CTUs must accept complaints. If the commission mandated the minimum methods by which CTUs must accept complaints, AT&T recommended the mandated methods be only telephone or letter. AT&T stated it should be up to a CTU whether to allow the use of faxes, e-mail, or any additional means of submission, for the receipt of complaints.

The commission agrees with AT&T and revises proposed §26.30(a) to indicate complaints may be submitted in person, by letter, or by any other means determined by the CTU.

AT&T recommended proposed §26.30(a)(1) clarify that the timeline for investigating and advising the complainant does not begin until the CTU has received sufficient information to initiate an investigation. AT&T recommended the commission require the information described in proposed §26.30(b)(1)(A)(i), (iii), (iv), and (v) must be received by the CTU before the time allowed for resolution of the complaint begins to run.

The commission does not believe the proposed amendments to §26.30(a)(1) are necessary. The time requirement applies only after a CTU receives sufficient information to begin an investigation. Furthermore, a CTU may contact the complainant to obtain additional information needed.

AT&T, MCI, SWBT, TSTCI, TTA, and Verizon recommended revising proposed §26.30(a)(1) to require written reports regarding complaint investigations only in those situations where the customer makes such a request as the requirement is unreasonably burdensome on customers and carriers. SWBT and Verizon also recommended revising proposed §26.30(a)(2)(A) in the same manner as proposed §26.30(a)(1).

TSTCI noted business office procedures typically match the type of response to the inquiry and that a customer who telephones the company may expect a telephone call response, while a

customer taking the time to send a written communication may expect a written response. SWBT noted customers are used to dealing with telephone companies by telephone and those customers who initially complain by telephone expect to receive a response by telephone because telephone calls are preferable as they afford more complete communication between the customer and the company than written communications. TSTCI also noted flexibility in the method of response permits a company to respond to the special needs of customers, which may include impaired hearing, impaired vision, or illiteracy. TTA stated it had been standard practice that if a customer requested the investigation findings and/or the supervisory review findings in writing, the companies are more than happy to comply. If an issue can be resolved and the customer is satisfied with a verbal report, TTA stated that should be an acceptable conclusion.

AT&T recommended a written document be required only when requested by the complainant or when the complaint remains open after 21 days. The CLEC Coalition stated that at most, the only other time a CTU should be required to provide a written response is if it is unable to resolve the complaint and cannot reach the customer by telephone.

WORLDCOM noted a consequence of the commission's proposal would be more time required to respond to every customer and the 21-day written response time for initial review under proposed §26.30(a)(1), and the ten day response time under proposed §26.30(a)(2)(A), would be inadequate. WORLDCOM also noted carriers would be saddled with unnecessary costs and wasteful papering.

The commission agrees with the parties and revises proposed §26.30(a)(1) and §26.30(a)(2)(A) to require only that a CTU notify a customer of the right to receive the results of an initial investigation or supervisory review in writing, upon request.

AT&T recommended proposed §26.30(a)(2)(B) be stricken or revised to allow NCTUs to determine the best methods to inform customers about the commission's complaint process. AT&T stated the contact information required by this subparagraph already appears on every telephone bill and the proposed requirement in §26.31 would also make this information available in a CTU's terms and conditions. Therefore it is unnecessary to impose another notification requirement.

In reply, Consumer Commenters strongly supported maintaining the requirement to inform customers of the commission's complaint process because customers tell them they find providers more cooperative once the commission enters the picture.

The commission determines that customers must be made aware of their ability to file a complaint with the commission. However, the commission revises proposed §26.30(a)(2)(B) to eliminate the requirement that the information must be in writing.

AT&T noted proposed §26.30(b) provides no closure process by which a CTU may ensure that a complaint is resolved. AT&T noted a customer may continue to express a complaint, which continues to trigger the application of this prohibition against suspension or disconnection. AT&T suggested the commission clarify the proposed rule so the protections afforded by

proposed §26.30(b)(1)(D)(i) do not apply when a customer is asserting a complaint that is the same or similar to a complaint previously raised that the CTU and/or commission has previously investigated and resolved in the CTU's favor.

The commission declines to limit the number of times and types of complaints a customer may submit to the commission.

Consumer Commenters proposed §26.30 be revised to inform customers of their right to complain to the Office of the Attorney General.

WORLDCOM commented that only those customers whose complaints have not been addressed to their satisfaction at the commission level should be referred to the Office of the Attorney General. WORLDCOM stated there has been no showing that the commission is unable to address a customer's concerns if the CTU is unable to resolve the matter on its own, nor has there been any showing why a blanket escalation of these complaints is necessary or could even be addressed by the Office of the Attorney General. WORLDCOM recommended this proposal be rejected and instead, the commission should continue to encourage and foster resolution of complaints at the CTU level.

The commission determines that the proposed revision is outside of the direction given by SB86 and SB560 which requires the commission to coordinate its enforcement efforts regarding the prosecution of fraudulent, misleading, deceptive, and anti-competitive efforts with the Office of the Attorney General. Most complaints do not involve fraudulent, misleading, deceptive, and

anti-competitive issues. Requiring CTUs to advise customers of their right to file a complaint with both the Office of the Attorney General and the commission could lead to confusion and would not benefit customers.

Consumer Commenters recommended revising proposed §26.30(b)(1)(D) to clarify that a consumer's service cannot be disconnected while disputing a bill. Consumer Commenters made this recommendation because, at a workshop, SWBT stated the company would like to formally docket complaints of customers who the company wishes to disconnect from service. Consumer Commenters were concerned the process of formal docketing could be used by a CTU or ETP to intimidate a customer into dropping a complaint, rather than working out a solution with the customer.

AT&T recommended Consumer Commenters' recommendation be dismissed since the non-disconnection of a disputed bill is already addressed in the commission's cramming rule. AT&T also recommended the commission allow a provider to suspend or disconnect a customer, regardless of a pending informal complaint process, in the event of fraud or other reason provided in proposed §26.28(a)(3) or (b)(3).

Consumer Commenters asserted that allowing a provider to suspend or disconnect while a complaint is ongoing gives the provider no incentive to work with the customer to solve a problem.

Proposed §26.28(a)(4)(C), now §26.28(a)(4)(D), and proposed §26.28(b)(4)(C), now §26.28(b)(4)(D), clearly prohibit the disconnection of basic local telecommunications service until a determination is made on the accuracy of charges. Additionally, §26.32 also prohibits the disconnection of service due to unauthorized charges. Consequently, the commission does not believe a revision to proposed §26.30(b)(1)(D) is necessary.

Consumer Commenters noted customer organizations are receiving growing numbers of calls from consumers who call a provider to ask about a billing or service problem and remain on hold for an hour or longer before speaking with a live person. Consumer Commenters proposed requiring CTUs and ETPs to establish and disclose to customers the company policy for the maximum time a customer will spend on "hold" prior to speaking with a live customer service representative.

AT&T, TTA, Verizon and WORLDCOM asserted there is no need for the commission to adopt this proposed rule. AT&T and TTA noted the hold times customers experience may fluctuate significantly depending on particular activities in the market. In the absence of a monopoly position in the market, an NCTU will not have the resources to staff customer service call centers at such a level at all times of the day and night as to never have lengthy hold times. AT&T, TTA, and WORLDCOM asserted this is a customer service issue that the market already addresses as it would be market "suicide" for competitors to not meet the needs of their customers in an appropriate amount of time.

WORLDCOM and Verizon commented that forcing CTUs to develop a maximum "on-hold" interval could potentially negatively impact customers, as it may only disincentive a CTU from providing customers in the queue the detailed assistance and information they require. WORLDCOM noted that a commission or CTU imposed maximum hold policy would foster a "call-back" environment, a consequence probably more disliked than being put on hold.

The commission determines an "on-hold" standard is a quality of service issue governed by §26.54, which is not included in this project.

§26.31, Disclosures to Applicants and Customers

SWBT and the CLEC Coalition commented that proposed §26.31 should apply to residential customers only. Most business customers receive written proposals, correspondence, and contracts documenting the course of negotiations and the deal struck. In the alternative, if the commission wished to treat small business owners in a manner consistent with the way residential customers are treated, the commission could make this section applicable to customers who have fewer than five access lines, using the definition of "customer access line" found in §26.5(50) relating to Definitions. SWBT stated it currently handles business customers with fewer than five access lines in a manner similar to residential customers.

TSTCI stated that because small ILECs mainly serve small businesses, the distinction between small and large businesses would not significantly reduce the amount of information the proposed rules require to be mailed.

AT&T submitted that if the commission adopted its proposal to limit the scope of information required to be provided, the commission could avoid the need to bifurcate the application of the proposed rule as proposed by SWBT and the CLEC Coalition.

The commission agrees that disclosure requirements should apply only to residential and small business service. The commission revises proposed §26.31 to indicate it applies only to residential service and small business service having five or fewer customer access lines, consistent with §26.403(d) relating to Texas High Cost Universal Service Plan (THCUSP).

AT&T noted that while proposed §26.31(a)(1)(A) exempts instances in which a single line of non-English text is present, the danger for unintended consequences remains significant. A translation requirement as proposed in §26.31(a)(1)(A) would limit the scope of marketing activity in Texas and penalize CTUs that reach out to a broader base of customers. As a result, AT&T recommended proposed §26.31(a)(1) be omitted or significantly limited in its application by applying only when a significant percentage (30% or more) of the promotion has been translated.

The commission does not agree with AT&T's recommendation. The purpose of proposed §26.31(a)(1) is to ensure full disclosure to targeted non-English speaking customers so that they have all of the information necessary to make informed decisions.

ASCENT noted proposed §26.31(a)(4) seems to give a CTU options for providing the information contained in proposed §26.31(a)(4)(C). If this was intended, ASCENT commented that the commission needed to revise proposed §26.31(a)(2)(A) to also allow the CTU to provide the location where the information contained in proposed §26.31(a)(4) may be found. AT&T concurred with ASCENT's observation and stated that if the commission adopted a rule to mandate the disclosure of this information, clarification of this issue would be beneficial. To clarify whether a CTU has the ability to either mail this information or make it available, AT&T recommended amending proposed §26.31(a)(4) to eliminate the written requirement and proposed §26.31(a)(4)(A) to allow the information to simply be made available.

The commission makes no changes to proposed §26.31(a)(2)(A). The commission revises proposed §26.31(a)(4)(A) to clarify that the information shall be sent biannually. The commission also revises proposed §26.31(a)(4)(B) to clarify that the options for providing the information in §26.31(a)(4) are only for the biannual mailing. However, this does not relieve a CTU from its obligation to provide the information in §26.31(a)(3) and (4) in writing at the initiation of service.

Consumer Commenters cited problems with proposed §26.31(a)(2)(A) because proposed §26.31(a)(3) contains many important disclosures, which would not be made to the consumer until the time service is initiated and before the first bill is sent. Consumer Commenters proposed a CTU explain the Terms and Conditions Statement and provide a copy of the Terms and Conditions of Service, if requested, before acceptance of service. Consumer Commenters

also proposed a statement of the company's "on-hold" policies be made prior to acceptance of service and an offer to provide a customer with a Customer Rights Statement.

AT&T, WORLDCOM, and Verizon recommended the commission not adopt Consumer Commenters' proposals. WORLDCOM noted it would be forced to send applicants a costly welcome package that is currently provided only to new customers. WORLDCOM urged the commission to provide CTUs the flexibility of addressing an applicant's request and to abstain from dictating the manner and format of the communications. AT&T stated Consumer Commenters' proposal would overburden consumers who do not want to hear a long presentation from any and every provider they are interested in considering. AT&T noted the time requirements for Consumer Commenters' proposal would require applicants to be on the phone for extended periods of time (such as to receive a full summary of the proposed Terms and Conditions Statement), and significantly slow down the ability of providers to timely provide service to customers.

The commission determines revisions to proposed §26.31(a)(2) are not necessary. The proposed rule already requires CTUs to disclose most of the information in the terms and conditions of service prior to acceptance of service. Additionally, a customer always has the ability to request a copy of the terms and conditions of service or the customer rights prior to acceptance of an offer. Lastly, as previously indicated, the commission has determined that addressing an on-hold policy is not appropriate in this rulemaking.

AT&T and TSTCI commented that several of the items in proposed §26.31(a)(2) are duplicative of information already required to be provided and verified pursuant to §26.32(e). AT&T recommended proposed §26.31(a)(2)(B)-(F) be deleted.

The information in proposed §26.31(a)(2)(B)-(F) does not create any additional burdens on CTUs, but rather assists CTUs by providing a complete list of all information requirements. Therefore, the commission makes no changes to proposed §26.31(a)(2)(B)-(F).

WORLDCOM proposed the commission delete the requirements regarding cancellation policies in proposed §26.31(a)(2)(H) and §26.31(a)(3)(B)(vii), because if a customer has questions regarding cancellation, the customer may ask the customer service representative for more information.

The commission finds that the conditions for cancellation should be revealed prior to acceptance of service and customers should have a copy of the cancellation policy as well. Furthermore, disclosure of the cancellation policy is already a requirement in current §26.32(e)(1)(G). Therefore, the commission does not delete the provisions in proposed §26.31(a)(2)(H) and §26.31(a)(3)(B)(vii).

Consumer Commenters proposed adding a requirement to proposed §26.31(a)(3) and §26.31(a)(4) that a CTU's terms and conditions statement and customer rights information must be provided in Spanish.

The CLEC Coalition noted there were no exemptions or waivers from this requirement and that the commission's proposed rule already requires NCTUs provide information in Spanish if they market to the Spanish-speaking market. The CLEC Coalition stated that to unilaterally require carriers to translate and print Spanish-language versions of all customer information, regardless of whether the NCTU serves only business markets or whether the NCTU has customers who are primarily Spanish-speaking, is addressing a problem that does not exist and is a costly regulatory burden that will impact the availability of competitive services for everybody.

The commission continues to require DCTUs to provide the information in §26.31(a)(4) in English and Spanish, except for DCTUs that have 10% or fewer customers that are exclusively Spanish speaking. However, NCTUs are guided by the requirements in §26.26, which require the terms and conditions of service and customer rights to be available in Spanish. This information must be provided in Spanish, upon request.

SWBT stated if the same rules do not apply to DCTUs and NCTUs, then the rules should take into account the significant difference in the amount of information DCTUs provide and/or make available to the public that NCTUs do not. SWBT and TTA noted that DCTUs are required to file tariffs, available for public inspection, describing in detail the terms and conditions of their services, post conspicuous notices in their offices accepting customer applications of the fact that their tariffs are available for public inspection, publish changes to the tariffs in the *Texas Register,* and maintain a *Your Rights as a Customer* section in white page directories. SWBT asserted that with all this information publicly available, there was no need to require DCTUs to provide separate written notice of their terms and conditions of service. SWBT commented the

costs in additional service representative time, processing, and mailing that would be required to send separate customer-specific notices would be a huge and unnecessary expense providing little or no added protection for the customer of the DCTU. SWBT recommended proposed §26.31(a)(3) be renumbered to "§26.31(c)" and apply only to NCTUs. TTA and TSTCI provided similar comments.

TTA believed the commission intended that the terms and conditions of service provisions apply to the NCTUs and that DCTUs would continue to comply with the *Your Rights As a Customer* provisions. For the NCTUs, whose rates, terms and conditions are not as explicit and constant as the DCTU's tariffed services, TTA believed the Terms and Conditions document may be appropriate. TTA further noted that given the nature of the NCTU's service offering packaging, the majority of the NCTUs provide this type of information to their customers today as standard business practice.

AT&T disagreed with SWBT's and TTA's position that only DCTUs should be allowed to rely on their tariffs to provide necessary information regarding terms and conditions. AT&T submitted that to the extent the commission adopted a rule requiring CTU's to provide this information to customers, NCTUs should also be allowed to rely on their tariffs that are on file with the commission and available to customers for copy or review to satisfy any disclosure requirement of this nature.

The commission believes it is essential that each CTU provide a copy of the customer rights and the terms and conditions of service to all of its residential and small business customers. While

much of this information may be included in a CTU's tariff, customers do not have ready access to tariffs. A CTU may provide both its customer rights information and its terms and conditions of service through publication in the local telephone directory.

Consumer Commenters recommended proposed §26.31(a)(3) be revised to include provisions which require any contract offered by a CTU or ETP to include the terms and conditions of service statement, prohibit a residential contract from including statements which waive customer rights, and require that terms and conditions of service statements be filed with the commission for informational purposes. Consumer Commenters noted NCTUs are prohibited under law from discriminating among consumers, but stated it is possible to "discriminate" against a person by offering to that customer such absurd terms of service that they are effectively precluded from accepting the service. To prevent such discrimination, Consumer Commenters recommended requiring providers to file terms and conditions of service statements with the commission, not for approval, but for informational purposes.

The commission revises proposed §26.31(a)(3) to require any contract offered by a CTU to include the terms and conditions of service statement and to prohibit a residential or business contract from including statements which waive customer rights under law or commission rules. The commission does not agree with the recommendation that CTUs be required to file the terms and conditions of service with the commission.

WORLDCOM recommended proposed clauses §26.31(a)(3)(B)(iv)-(vii) be struck. WORLDCOM and SWBT stated it would be confusing to customers to receive *post*-acceptance

information that is only relevant in the *pre*-acceptance stage, such as monies that must be paid prior to installation, applicable construction charges, and necessary changes in the telephone number. Moreover, because these disclosures are highly customer-specific, providing them in a written format post-acceptance is both unnecessary and incredibly costly.

The commission finds that customers are entitled to have documentation to substantiate any claims made by the CTU at the time that service was requested. Furthermore, including these items in the terms and conditions of service should not add significantly to the cost of providing a terms and conditions of service statement.

Consumer Commenters recommended adding to proposed §26.31(a)(3) certain disclosures such as an itemization of any charges which may be imposed on the customer, the provider's legal name (for purposes of complaints and legal action), the provider's on-hold policy, and a disclosure of the provider's privacy policy. Consumer Commenters recommended proposed §26.31(a)(3)(B)(i) include disclosure of government-imposed or approved fees and surcharges, proposed §26.31(a)(3)(B)(ii) include bundled packages, and proposed §26.31(a)(3)(B)(iii) specify whether contract terms are month to month and any fees associated with early termination of a contract.

WORLDCOM was troubled by Consumer Commenters' proposal requiring the inclusion of information regarding governmental fees, itemized non-recurring fees, CPNI policies, and "hold-time" policies. WORLDCOM asserted that customer representatives can and do provide these types of additional information to any customer who requests it, and most of this information is

provided in a highly detailed format on the WORLDCOM webpage. WORLDCOM and AT&T noted additional prescriptive regulations would be wasteful and drive up customer rates, and recommended the commission reject Consumer Commenters' proposal.

The commission accepts four recommendations from Consumer Commenters. The commission finds customers should be made aware of any charges which may be imposed on the customer including, but not limited to, charges for late payments and returned checks and revises proposed §26.31(a)(3)(B) to include this requirement. The commission also adds to proposed §26.31(a)(3)(B), a requirement that the provider's legal name appear on the terms and conditions of service. The commission also revises proposed §26.31(a)(3)(B)(iii) (now (iv)) to identify any fees associated with early termination of a contract. The commission revises proposed §26.31(a)(3)(B)(ii) (now (iii)) to clarify that the terms and conditions of service must include a full description of each product or service. The commission does not accept the recommendation that proposed §26.31(a)(3)(B)(i) require disclosure of government-imposed or approved fees and surcharges. The proposed rule requires rates to be disclosed as they will appear on the bill, and per the commission's recent bill format project, Project Number 22130, providers are allowed to determine whether or not these fees are separately broken out or are recovered through a bundled rate. The commission does not accept the recommendation to require on-hold policies, since §26.54 is not addressed in this project. Finally, the commission does not accept the recommendation to disclose privacy policies as this is covered in the customer rights information.

ASCENT, AT&T, and WORLDCOM commented on proposed §26.31(a)(4)(B), which requires the location of the information be provided to customers every six months, is administratively burdensome and costly to CTUs, with limited countervailing public benefit. ASCENT and AT&T stated subscribers will typically disregard messages and will simply contact the service provider's toll-free customer service number when wishing to resolve a service issue. It was also not clear to AT&T why the commission would require a CTU to print bill inserts or bill messages every six months in order to avoid the biannual mailing requirement.

The customer rights information can either be provided biannually or published in the local telephone directory if customers are advised of the location of this information through bill statements or billing inserts every six months. A CTU can determine which method is more cost effective. The commission revises proposed §26.31(a)(4)(A) and (B) to clarify this point.

AT&T, the CLEC Coalition, TTA, and WORLDCOM commented it should be up to the NCTU to determine the best way to provide the large amount of information required by proposed §26.31(a)(4)(C). AT&T, TTA, and WORLDCOM recommended the omission of this proposed requirement or a significant limitation in the amount of required information, as many of the proposed requirements are duplicative of disclosure requirements in other rules. Additionally, AT&T noted there had been no showing that these other rules have failed in their objectives. WORLDCOM also stated much of this information is currently found in its tariffs or "fulfillment kits" (welcome documents), and customers may always ask the customer service representatives for this type of information. The CLEC Coalition recommended the commission implement a suggestion made at the public hearing that the commission require that certain standard

information be published in the telephone directories; then CTUs would only have to point to the directory and provide information that is different from the standard.

The commission finds that the disclosures relevant to a customer's rights should be provided in a single document, which can be published in the local telephone directory. The commission notes that CTUs are given some flexibility and options in providing this information. Therefore, the commission denies the request to delete or limit the provisions in proposed §26.31(a)(4)(C).

AT&T commented that the information in proposed §26.31(a)(4)(C)(iii), (iv), and (vii) regarding grounds for suspension and disconnection is only relevant when the issue arises, and that including such information at the outset of the CTU's relationship with a new customer may be viewed as more acrimonious than helpful. AT&T asserted that customers concerned about such issues may always call customer service for this information.

The commission determines that customers are entitled to know what actions may lead to suspension or disconnection, the steps a CTU must take before suspending or disconnecting service, the steps for resolving billing disputes, and how disputes affect suspension or disconnection. Therefore, the commission adopts proposed §26.31(a)(4)(C)(iii), (iv), and (vii) without modification.

Consumer Commenters recommended proposed §26.31(a)(4)(C)(xix) be revised to require a CTU which does not provide Lifeline or Tel-Assistance to provide a notice of how a customer can contact a DCTU or ETP who provides that service.

AT&T commented that the information in proposed §26.31(a)(4)(C)(xi) and (xix) regarding CPNI issues and how state agencies and local providers share information about customers who qualify for Lifeline or Tel-Assistance is information that remains subject to changes and may not even be relevant to the customers served by the CTU.

The information required in proposed §26.31(a)(4)(C)(xi) reflects requirements in current §26.122(f) relating to Customer Proprietary Network Information. Also, the commission should not require CTUs to refer potential customers to other providers, and therefore, makes no changes to proposed §26.31(a)(4)(C)(xix) or §26.31(a)(4)(C)(xi).

AT&T stated proposed §26.31(a)(5) was inherently ambiguous about what constitutes a "material change," thus, failing to provide notice within the prescribed window of time of any change in terms and conditions could be interpreted to be a violation of the proposed rule.

The commission determines there is no need to define material change, as a reasonable person standard should be apply.

AT&T anticipated proposed §26.31(a)(5) would not apply to price changes that may be effective as early as the day revised tariffs are filed. AT&T stated it should be recognized that this requirement could force CTUs to delay by at least 30 days any proposed changes that would benefit customers. AT&T stated that existing laws, such as the DTPA, can provide sufficient

legal redress in the event a CTU fails to provide adequate notice when necessary and recommended this proposed rule be omitted.

Verizon recommended the notification of change in customer rights or terms and conditions of service be done within 30-60 days and not in advance of the change. AT&T agreed that the modification proposed by Verizon would at least mitigate the potential adverse consequences of the proposed rule.

Consumer Commenters recommended requiring notification due to change of ownership and that customers have the right to cancel service without penalty if they refuse to accept a provider's material change in terms or conditions.

WORLDCOM stated customers always have the right to choose another carrier and CTUs will attempt to keep a customer if they do not want to accept a change in a term of service.

The commission does not agree with the proposals of AT&T and Verizon. The commission agrees with Consumer Commenters' proposal to allow a customer to decline to accept any material change in terms and conditions of service and to terminate service without penalty due to a material change in terms and conditions and revises proposed §26.31(a)(5) accordingly. However, the commission does not accept Consumer Commenters' proposal to require notice of change of ownership as part of §26.31 because this issue is already addressed in current §26.130(k) relating to Selection of Telecommunications Utilities, and §26.113(f) relating to Amendment of Certificate of Operating Authority (COA) or Service Provider Certificate of

Operating Authority (SPCOA). The commission further revises proposed §26.31(a)(5) to indicate that this paragraph does not apply to changes that are beneficial to the customer such as a price decrease or mandated regulatory changes.

SWBT and WORLDCOM commented that proposed §26.31(a)(6) should be deleted. In the alternative, SWBT stated it should be revised to make clear that it does not preclude the CTU from collecting installation charges and one month's service charges when provided for by tariff. WORLDCOM asserted carriers are entitled to recover customer charges and the costs incurred to serve a customer if the customer accepts service and then shortly after cancels. TSTCI and WORLDCOM noted the proposed additional "notice of right to rescind" would increase mailing expenses and only serve to alarm and confuse customers.

AT&T also commented that the right of rescission would subject CTUs to increased uncollectibles resulting from customers not paying installation charges and service expenses incurred to initiate service to the customer in a timely manner after the customer has verified their intent to subscribe to service. The CLEC Coalition asserted a CTU could not be expected to process a request for service expeditiously if it may incur cost that cannot be recovered if the customer decides to cancel.

The CLEC Coalition and SWBT emphatically asserted that under no circumstances should the commission grant a right of rescission to business customers. SWBT commented that the right of rescission is not necessary in the context of business transactions which often involve sophisticated business entities that engage in protracted negotiations with the CTU, after

considering proposals from a number of different providers. SWBT noted the risks for business service are heightened in the context of temporary services, where a business may enter into a transaction for a one or two-day tradeshow or other event. In those contexts, the customer may have no incentive to honor his obligation whatsoever, when he can rescind the transaction after he already has consumed the services contracted for.

AT&T disagreed with the CLEC Coalition and SWBT's intimation that the adverse impacts that would result if applied only to residential customers would be minimal. AT&T asserted when an NCTU serves its customers using UNEs, and when non-cost based charges are imposed on NCTUs to switch a customer from a DCTU to the NCTU, the potential for significant economic impacts to NCTUs is great.

AT&T, the CLEC Coalition, and Verizon commented that the result of this provision would be to delay service received by customers by some period of time greater than five days, thereby also jeopardizing the CTU's ability to comply with rules relating to deadlines for providing service. AT&T asserted the result of this rule would be to deter innovation and restrict better customer service as CTUs that offer service using innovative and expensive technology can be expected to refuse to serve customers until after the rescission period has expired. The CLEC Coalition noted any delay occasioned by a CTU's hesitancy to process an application until after the cancellation date is passed, could present a problem for a local residential customer who might not want any delay for the sake of a right they do not plan on exercising.

AT&T and WORLDCOM stated the commission is overreaching its authority as nothing in PURA gives the commission authority to require CTUs to forgive any customer charges incurred prior to cancellation as long as the cancellation occurs within five days. AT&T commented this proposed right of rescission is for a longer period of time than currently allowed by the state's Three Day Right to Cancel Law, Texas Business Commerce Code Annotated §39.001 *et seq.*, and would have a far broader application than that law. AT&T recommended that rather than adopt this proposed rule, the commission should evaluate the impact of its new slamming rule and evaluate at a later time whether any further changes are necessary.

SWBT asserted this proposed subsection extends beyond the consumer protections afforded by Texas statutes. SWBT cited §§39.001 - 39.009 of the Texas Business and Commerce Code, which apply only to consumer transactions. SWBT asserts these sections clearly do not apply to business customers of a CTU. SWBT also noted these statutes provide for rescission within three business days after notice is given (Texas Business Commerce Code Annotated §39.003), not five calendar days. SWBT and the CLEC Coalition asserted that the statutes apply only to "personal solicitation of a sale to the consumer at a place other than the merchant's place of business" (Texas Business Commerce Code Annotated §39.002(a)).

The CLEC Coalition noted that in the federal consumer credit protections found in Title 15, Chapter 41 of the U.S. Code, the only right of rescission for a consumer transaction is when there is a security interest in a principal dwelling of a person to whom credit is extended. The CLEC Coalition asserted the commission had no express statutory authority to grant a right of rescission

to telecommunications customers, and the demonstrable hesitancy of the Texas Legislature to enact such rights into law should warrant caution in this area.

The commission acknowledges the concerns expressed about the right of rescission, but believes this right is a necessary protection for residential applicants and customers. The commission believes that all residential applicants and customers are entitled to the right of rescission in accordance with applicable law. Additionally, any residential applicant or customer incurring an obligation exceeding 31 days should have the right of cancellation within a reasonable period after receiving the terms and conditions of service from the CTU. The right of cancellation is unnecessary if there is no obligation beyond one month of service since service may be cancelled in the first month without any liability beyond service received in that first month. The commission revises proposed §26.31(a)(6) accordingly.

Consumer Commenters proposed a new subsection (c) in §26.31 to establish general disclosure requirements concerning clarity standards for information requirements in §26.31.

WORLDCOM and AT&T recommended this proposal be rejected. WORLDCOM noted clarity is a fundamental element of remaining competitive and AT&T stated the proposed prescriptive approach would significantly inhibit the ability of CTUs to communicate effectively and in the best manner with their customers.

The commission believes the requirements in proposed §26.31(a)(3) and (4) sufficiently address clarity standards and does not add a new §26.31(c).

WORLDCOM urged the commission to revise proposed §26.31 to state that CTUs will have six months to comply with any printing requirements specified in the rule.

The commission urges all providers of local telecommunications service to take all necessary actions to comply with the requirements of proposed §26.31 as soon as possible. The commission allows NCTUs until March 1, 2001 to implement the provisions of §26.31. The commission will consider any waiver request for an extension of time to comply. However, approval will require substantial justification.

Tariff Filings

Commission Substantive Rule §26.207(e)(5) relating to Form and Filing of Tariffs, states that tariffs shall contain the service rules and regulations. DCTU tariffs generally include most of the provisions of the customer service and protection substantive rules (Subchapter B, §26.21 through §26.31), usually repeating the substantive rules verbatim. When the commission revises customer service and protection substantive rules, DCTUs revise the tariffs accordingly.

There does not appear to be a significant benefit to repeating customer service and protection substantive rules in tariffs. Few applicants and customers read a tariff. Tariff changes due to substantive rule changes can be expensive for smaller DCTUs and time consuming for the commission staff. Furthermore, in the event of a conflict between a tariff and a substantive rule, the substantive rule prevails. As part of this rulemaking, DCTUs are required to provide

essential information about customer rights and terms and conditions of service to applicants and customers. These disclosure requirements are a better approach to informing applicants and customers than through tariffs.

Therefore, in lieu of repeating customer service and protection rules in its tariff, a DCTU may reference these rules in its tariff and include a copy of the rules with its tariff. The tariff should indicate that additional rules regarding customers may be found in the P.U.C. Substantive Rules, Chapter 26, Subchapter B, titled "Customer Service and Protection," that these substantive rules are included at the end of the tariff and may also be viewed at the commission's web site at http://www.puc.state.tx.us, and that the DCTU shall provide a paper copy of these substantive rules upon request by a customer, at reproduction cost.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting these rules, the commission makes other minor modifications for the purpose of clarifying its intent.

These new rules are adopted pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2000) (PURA), which provides the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. PURA §§17.003(c), 17.004, and 17.052(3) which were added by Senate Bill 86, Act of May 30, 1999, 76th Legislature, Regular Session, chapter 1579, 1999 Texas Session Law Service 5421, 5423, 5424 (Vernon) (codified as an amendment to PURA, Texas Utilities Code Annotated §§17.003(c), 17.004, and 17.052(3)), and PURA

§§64.003(c), 64.004, and 64.052(3) which were added by Senate Bill 560, Act of May 30, 1999, 76th Legislature, Regular Session, chapter 1212, 1999 Texas Session Law Service 4210, 4236, 4237, (Vernon) (codified as an amendment to PURA, Texas Utilities Code Annotated §§64.003(c), 64.004, and 64.052(3)), grant the commission the authority to adopt and enforce rules to require a certificated telecommunications utility (CTU) to provide clear, uniform, understandable information about rates, terms, services, customer rights, and other necessary information and establish minimum customer service and protection standards for dominant certificated telecommunication utilities (DCTUs) and non-dominant certificated telecommunications utilities (NCTUs).

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 17.003(c), 17.004, 17.052(3), 64.003(c), 64.004, and 64.052(3).

§26.21. General Provisions of Customer Service and Protection Rules.

(a) **Purpose.** The purpose of the rules in this subchapter is to ensure certain customer protections in the provision of local telecommunications service by certificated telecommunications utilities (CTUs) and to establish minimum customer service standards that a CTU shall meet in providing telecommunications service to the public. Nothing in these rules should be interpreted as preventing a CTU from adopting stronger customer protection policies for all customers or for differing groups of customers, as long as those policies do not violate the prohibitions against discrimination in subsection (b) of this section.

(b) **Prohibition against discrimination.**

(1) This subchapter prohibits CTUs from discrimination based on race, nationality, color, religion, sex, marital status, income level, source of income, and from unreasonable discrimination on the basis of geographic location.

(2) CTUs shall establish an anti-discrimination policy and shall maintain all appropriate information needed to demonstrate compliance.

(3) Upon request by a customer or the commission, a CTU shall provide its anti-discrimination policy and all information necessary to demonstrate compliance with anti-discrimination requirements.

(c) **Other prohibitions.** No CTU shall engage in any fraudulent, unfair, misleading, deceptive, or anti-competitive practice.

(d) **Protections.** All customer protections and disclosures established by the Fair Credit Reporting Act (15 U.S.C. §§1681, *et seq*.) and the Truth in Lending Act (15 U.S.C. §§1601, *et seq*.) are applicable where appropriate whether or not explicitly stated in the rules.

(e) **Definitions.** The following words and terms when used in this subchapter shall have the following meanings, unless the context indicates otherwise.

(1) **Applicant** — A person who applies for service for the first time or reapplies after disconnection of service.

(2) **Customer** — A person who is currently receiving service from a CTU in the person's own name or the name of the person's spouse.

(3) **Days** — Refers to calendar days.

(4) **In writing** —Written words memorialized on paper or sent electronically.

§26.22. Request for Service.

(a) **Dominant certificated telecommunications utility (DCTU).**

(1) Every DCTU shall provide local telecommunications service to each qualified applicant for service and to each of its customers within its certificated area in accordance with §26.54(c)(1) of this title (relating to Service Objectives and Performance Benchmarks).

(2) If construction, such as line extensions or facilities, is required for installation of local telecommunications service:

(A) the DCTU shall complete the construction within 90 days or within a time period agreed to by the customer and the DCTU after the applicant has established satisfactory credit in accordance with §26.24 of this title (relating to Credit Requirements and Deposits), made satisfactory payment arrangements for construction charges, and complied with state and municipal regulations;

(B) the DCTU shall contact the applicant for service within ten work days of receipt of the application and give the applicant an estimated completion date and an estimated cost for all charges to be incurred by the applicant; and

(C) following the assessment of any necessary construction, the DCTU shall explain to the applicant any construction cost options such as rebates, sharing of construction costs between the DCTU and the applicant, or sharing of costs between the applicant and other applicants.

(3) A DCTU may require an applicant for service to establish satisfactory credit or to pay a deposit in accordance with §26.24 of this title.

(b) **Non-dominant certificated telecommunications utility (NCTU).**

(1) Every NCTU shall provide local telecommunications service to applicants within its certificated area who have accepted the NCTU's terms and conditions of

service and in accordance with the customer safeguards in §26.272(i) of this title (relating to Interconnection).

(2) If construction, such as line extensions or facilities, is required for installation of local telecommunications service:

(A) the NCTU shall contact the applicant for service within ten work days of receipt of the application and give the applicant an estimated completion date and an estimated cost for all charges to be incurred by the applicant; and

(B) following the assessment of any necessary construction, the NCTU shall explain to the applicant any construction cost options such as rebates, sharing of construction costs between the NCTU and the applicant, or sharing of costs between the applicant and other applicants.

§26.23. Refusal of Service.

(a) **Dominant certificated telecommunications utility (DCTU).**

(1) A DCTU may refuse to provide an applicant with basic local telecommunications service only for one or more of the following reasons:

(A) Applicant's facilities inadequate. The applicant's installation or equipment is known to be hazardous or of such character that satisfactory service cannot be given.

(B) Use of prohibited equipment or attachments. The applicant fails to comply with the DCTU's tariffs pertaining to operation of nonstandard equipment or unauthorized attachments that interfere with the service of others.

(C) Failure to pay guarantee. The applicant has acted as a guarantor for another customer of the DCTU and fails to pay the guaranteed amount, where such guarantee was made in writing to the DCTU and was a condition of service.

(D) Intent to deceive. The applicant requests service at a location where another customer received or continues to receive service, the other customer's bill from the DCTU is unpaid at that location, and the DCTU can prove that the change of account holder and billing name is made to avoid or evade payment of an outstanding bill owed to the DCTU.

(E) For indebtedness.

(i) If a residential applicant owes a debt to any DCTU for:

(I) tariffed local telecommunications service, except as provided in §26.29 of this title (relating to Prepaid Local Telephone Service (PLTS); or

(II) long distance charges after toll blocking was imposed as provided in §26.28 of this title (relating to Suspension or Disconnection of Service).

(ii) If a non-residential applicant owes a debt to any DCTU for tariffed non-residential local telecommunications service, including long distance charges.

(iii) If an applicant's indebtedness is in dispute, basic local telecommunications service shall be provided upon the applicant's compliance with the deposit requirements in §26.24 of this title (relating to Credit Requirements and Deposits).

(F) Refusal to pay a deposit. The applicant refuses to pay a deposit if the applicant is required to do so under §26.24 of this title.

(G) Failure to comply with regulations. The applicant fails to comply with all applicable state and municipal regulations.

(2) **Applicant's recourse.**

(A) If a DCTU has refused to serve a residential applicant, the DCTU must send the applicant notice in writing within five work days of the determination to refuse service:

(i) of the reason or reasons for its refusal;

(ii) that the applicant will be eligible for service if the applicant remedies the reason or reasons for refusal and complies with the DCTU's tariffs and terms and conditions of service;

(iii) that the applicant may request a supervisory review by the DCTU and may file a complaint with the commission as described in §26.30 of this title (relating to Complaints); and

(iv) that no telecommunications utility is permitted to:

(I) refuse service on the basis of race, color, sex, nationality, religion, marital status, income level, or source of income; nor

(II) unreasonably refuse service on the basis of geographic location.

(B) Additionally, the DCTU must inform applicants eligible for prepaid local telephone service under §26.29 of this title that this service is available if they are not otherwise eligible for basic local telecommunications service.

(3) **Insufficient grounds for refusal to serve.** The following are not sufficient grounds for refusal of basic local telecommunications service to an applicant by a DCTU:

(A) delinquency in payment for service by a previous occupant of the premises to be served;

(B) failure to pay for any charges that are not provided in the DCTU's tariffs on file at the commission;

(C) failure to pay a bill that includes more than six months of underbilling unless the underbilling is the result of theft of service by the applicant;

(D) failure to pay the bill of another customer at the same address except where the change of account holder and billing name is made to avoid or evade payment of that bill; and

(E) failure of a residential applicant to pay for any charges other than for local telecommunications service except for long distance charges incurred after toll blocking was imposed as provided in §26.28 of this title.

(b) **Non-dominant certificated telecommunications utility (NCTU).**

(1) An NCTU may refuse to provide an applicant with basic local telecommunications service for:

(A) the applicant's failure to comply with all applicable federal, state, and municipal regulations; or

(B) any other reason that does not violate applicable federal, state, or municipal statutes, rules, or regulations.

(2) **Applicant's recourse.**

(A) If an NCTU who offers residential service has refused to provide a residential applicant with basic local telecommunications service, the NCTU must inform the applicant of the determination to refuse service:

(i) of the reason or reasons for its refusal; and

(ii) that the applicant will be eligible for service if the applicant remedies the reason or reasons for refusal and complies with the NCTU's terms and conditions of service.

(B) The information required by subparagraph (A) of this paragraph shall be sent to the applicant in writing within five working days, if required by the federal Equal Credit Opportunity Act, 15 U.S.C. §1691 *et seq*., or if it is requested by the applicant. The NCTU shall inform the applicant that the applicant may request a supervisory review by the NCTU and may file a complaint with the commission as described in §26.30 of this title.

(3) **Insufficient grounds for refusal to serve.** The following are not sufficient grounds for refusal of basic local telecommunications service to an applicant by an NCTU:

(A) delinquency in payment for service by a previous occupant of the premises to be served;

(B) failure to pay for any charges that are not provided in the NCTU's tariffs, schedules, or lists on file with the commission in accordance with §26.89 of this title (relating to Information Regarding Rates and Services of Non-dominant Carriers), terms and conditions of service, or customer-specific contracts;

(C) failure to pay a bill that includes more than six months of underbilling unless the underbilling is the result of theft of service by the applicant;

(D) failure to pay the bill of another customer at the same address except where the change of account holder and billing name is made to avoid or evade payment of that bill; and

(E) failure of a residential applicant to pay for any charges other than for local telecommunications service except for long distance charges incurred after toll blocking was imposed as provided in §26.28 of this title.

§26.24. Credit Requirements and Deposits.

(a) **Dominant certificated telecommunications utility (DCTU).**

(1) **Credit requirements for permanent residential applicants.**

(A) A DCTU may require a residential applicant for local telecommunications service to establish and maintain satisfactory credit as a condition of providing service.

(i) Establishment of credit or payment of a deposit shall not relieve any customer from complying with the DCTU's requirements for prompt payment of bills.

(ii) The creditworthiness of spouses established during the last 12 months of shared service prior to their divorce will be equally applied to both spouses for 12 months immediately after their divorce.

(B) A residential applicant can demonstrate satisfactory credit using one of the criteria listed in clauses (i) - (iv) of this subparagraph.

(i) Payment record. The residential applicant:

(I) has been a customer of any DCTU for residential local telecommunications service within the last two years;

(II) is not delinquent in payment of any residential DCTU service;

(III) during the last 12 consecutive months of service was not late in paying a bill more than once and did not have service disconnected for nonpayment; and

(IV) upon request, shall receive a letter of credit history from the applicant's previous DCTU. DCTUs are required to keep payment history for two years after termination of service to a customer.

(ii) Other means. The residential applicant demonstrates a satisfactory credit rating by appropriate means, including, but not limited to, the production of:

(I) generally accepted credit history;

(II) letters of credit reference;

(III) the names of credit references which may be quickly and inexpensively contacted by the utility; or

(IV) ownership of substantial equity that is easily liquidated.

(iii) Senior applicant. The residential applicant is 65 years of age or older and does not have an outstanding residential service account balance incurred within the last two years with a DCTU.

(iv) Domestic violence victim: The residential applicant has been determined to be a victim of family violence as defined in Texas Family Code §71.004, by a family violence center or by treating medical personnel. This determination shall be evidenced by

submission of a certification letter developed by the Texas Council on Family Violence.

(C) The DCTU may require the applicant to pay a deposit only if the applicant does not demonstrate satisfactory credit using the criteria in subparagraph (B) of this paragraph.

(2) **Credit requirements for non-residential applicants.** The DCTU may require a non-residential applicant to pay a deposit if the applicant's credit for service has not been demonstrated satisfactorily to the DCTU.

(3) **Credit requirements for temporary or seasonal service and for weekend residences.** The DCTU may establish credit policy and deposit requirements to reasonably protect it against the assumed risk for temporary or seasonal service or service to a weekend residence, as long as the policy and requirements are applied in a uniform and nondiscriminatory manner. The DCTU shall return deposits according to guidelines set out in paragraph (11) of this subsection.

(4) **Initial deposits.**

(A) A residential applicant or customer who is required to pay an initial deposit may provide the DCTU with a written letter of guarantee instead of paying a cash deposit.

(B) A DCTU shall not require an initial deposit from an existing customer unless the customer was late paying a bill more than once during the last 12 months of service or had service disconnected for nonpayment. The customer may be required to pay this initial deposit within ten days after issuance of a written disconnection notice that requests such deposit.

Instead of an initial deposit, the customer may pay the total amount due on the current bill by the due date of the bill, provided the customer has not exercised this option in the previous 12 months.

(5) **Additional deposits.**

(A) During the first 12 months of service, the DCTU may request an additional deposit if the customer's actual usage:

(i) is at least three times estimated usage (or three times average usage of the three most recent bills);

(ii) exceeds $150; and

(iii) exceeds 150% of the security held.

(B) A DCTU may also require an additional deposit if:

(i) actual billings of a residential customer are at least twice the amount of the estimated billings after two billing periods;

(ii) actual billings of a non-residential customer are at least twice the amount of the estimated billings; and

(iii) a suspension or disconnection notice was issued for the account within the previous 12 months.

(C) A DCTU may require an additional deposit be paid within ten days after issuing written notice of suspension or disconnection and requesting an additional deposit.

(D) Instead of an additional deposit, a residential customer may elect to pay the total amount due on the current bill by the due date of the bill,

provided the customer has not exercised this option in the previous 12 months.

(E) The DCTU may disconnect service if the additional deposit or the current usage payment is not paid within ten days of request provided a written suspension or disconnection notice has been issued to the customer. A suspension or disconnection notice may be issued concurrently with the written request for the additional deposit or current usage payment.

(6) **Amount of deposit.** When a DCTU requires a deposit:

(A) The total of all deposits, initial and additional, shall not exceed an amount equivalent to one-sixth of the estimated annual billing, except as provided in §26.29 of this title (relating to Prepaid Local Telephone Service).

(B) The estimated annual billings shall not include charges that are not in a DCTU's tariff.

(C) For residential applicants and customers:

(i) estimated annual billings:

(I) shall not include long distance charges from other service providers;

(II) may include charges for tariffed local telecommunications services;

(III) may include charges for intraLATA toll only if the DCTU or its affiliate is providing this service to the customer; and

(IV) may include charges for interLATA toll only if the DCTU or its affiliate is providing this service to the customer.

(ii) the deposit amount related to local telecommunications service and long distance service shall be separately identified.

(iii) the deposit amount related only to basic local telecommunications service may be required as a condition for providing basic local telecommunications services.

(D) For non-residential applicants and customers, estimated annual billings may include long distance charges only when the DCTU bills those charges.

(7) **Interest on deposits.**

(A) Each DCTU requiring deposits shall pay interest, compounded annually, on these deposits. The annual rate shall be at least equal to that set by the commission on December 1 of the preceding year, pursuant to Texas Utilities Code Annotated §183.003 (Vernon 1998) (relating to Rate of Interest).

(i) If a deposit is refunded within 30 days of receipt, no interest payment is required.

(ii) If the utility keeps the deposit more than 30 days, payment of interest shall be made retroactive to the date of deposit.

(B) Payment of the interest to the customer shall be made annually, if requested by the customer, or at the time the deposit is returned or credited to the customer's account.

(C) The deposit shall draw interest until the date it is returned or credited to the customer's account.

(8) **Notification to applicants and customers.** When a deposit is required, the DCTU shall explain to applicants or customers the terms and conditions related to deposits and refunds.

(9) **Records of deposits.** The DCTU shall:

(A) Keep records to show:

(i) the name and address of each depositor;

(ii) the amount and date of the deposit; and

(iii) each transaction concerning the deposit;

(B) Issue a receipt of deposit to each applicant or customer paying a deposit and provide means for a depositor to establish claim if the receipt is lost;

(C) Keep deposit records for one year after a deposit is refunded;

(D) Maintain each unclaimed deposit for at least four years;

(E) Make a reasonable effort to return an unclaimed deposit;

(F) Upon the sale or transfer of any DCTU or any of its operating units, provide the buyer with all deposit records.

(10) **Guarantees of residential customer accounts.**

(A) A guarantee between a DCTU and a guarantor must be in writing and shall be for no more than the amount of deposit the DCTU would require on the customer's account pursuant to paragraph (6) of this subsection. The amount of the guarantee shall be clearly indicated in the signed agreement.

(B) The guarantee shall be voided and returned to the guarantor according to the provisions of paragraph (11) of this subsection.

(C) Upon default by a residential customer, the guarantor of that customer's account shall be responsible for the unpaid balance of the account only up to the amount in the written agreement.

(D) The DCTU shall provide written notification to the guarantor of the customer's default, the amount owed by the guarantor, and the due date for the amount owed.

(i) The DCTU shall allow the guarantor 16 days from the date of notification to pay the amount owed on the defaulted account. If the sixteenth day falls on a holiday or weekend, the due date shall be the next work day.

(ii) The DCTU may transfer the amount owed on the defaulted account to the guarantor's own service bill provided the guaranteed amount owed is identified separately on the bill.

(E) The DCTU may disconnect service to the guarantor for nonpayment of the guaranteed amount only if the disconnection was included in the terms of the written agreement and only after proper notice as described by subparagraph (D) of this paragraph, and §26.28 of this title (relating to Suspension or Disconnection of Service).

(11) **Refunding deposits and voiding letters of guarantee.**

(A) If service is not connected, or is disconnected, the DCTU shall:

(i) promptly void and return to the guarantor all letters of guarantee on the account; or

(ii) provide written documentation that the contract has been voided; or

(iii) refund the applicant's or customer's deposit plus accrued interest on the balance in excess of the unpaid bills for service furnished.

(B) If residential service is disconnected, the DCTU shall ensure that the deposit amount for local telecommunications service is applied first to local telecommunications service charges.

(C) A transfer of service from one premise to another within the service area of the DCTU is not a disconnection.

(D) The DCTU shall promptly refund the deposit plus accrued interest to the customer, or void and return the guarantee, or provide written documentation that the contract has been voided, when the customer:

(i) paid bills for 12 consecutive residential billings or for 24 consecutive non-residential billings without having service disconnected for nonpayment;

(ii) was not late in paying a bill more than twice in the last 12 consecutive billings (24 for non-residential); and

(iii) is not delinquent in the payment of the current bill.

(E) If the customer does not meet the refund criteria in subparagraph (D) of this paragraph, the DCTU may retain the deposit and interest or the letter of guarantee.

(12) **Re-establishment of credit.**

(A) Before service is reconnected, the DCTU may require an applicant whose service was previously disconnected for nonpayment or theft of service, to reestablish credit and to pay:

(i) all amounts due the DCTU; or

(ii) execute a deferred payment agreement, if offered.

(B) The DCTU must prove that the amount due for services furnished and any other charges required as a condition of local service restoration are correct.

(C) The DCTU may require a residential applicant to pay or execute a deferred payment agreement only for the total amount due for tariffed local telecommunications service in order to receive basic local telecommunications service.

(13) **Customer credit and deposit information.** A DCTU shall safeguard customer credit and deposit information in accordance with §26.122 of this title (relating to Customer Propriety Network Information).

(b) **Non-dominant certificated telecommunications utility (NCTU).**

(1) **Credit requirements for permanent residential applicants.** An NCTU may require a residential applicant for local telecommunications service to establish and maintain satisfactory credit as a condition of providing service.

(A) Establishment of credit or payment of a deposit shall not relieve any customer from complying with the NCTU's requirements for prompt payment of bills.

(B) The creditworthiness of spouses established during the last 12 months of shared service prior to their divorce will be equally applied to both spouses for 12 months immediately after their divorce.

(2) **Amount of deposit.** When an NCTU requires a deposit:

(A) The total of all deposits, initial and additional, shall not exceed an amount equivalent to one-sixth of the estimated annual billing.

(B) For residential applicants and customers:

(i) estimated annual billings shall not include long distance charges from other non-affiliated service providers;

(ii) the deposit amount related to local telecommunications service and long distance service shall be separately identified; and

(iii) the deposit amount related only to basic local telecommunications service may be required as a condition for providing basic local telecommunications services.

(3) **Interest on deposits.**

(A) Each NCTU requiring deposits shall pay interest, compounded annually, on these deposits. The annual rate shall be at least equal to that set by the commission on December 1 of the preceding year, pursuant to Texas Utilities Code Annotated §183.003 (Vernon 1998) (relating to Rate of Interest).

(i) If a deposit is refunded within 30 days of receipt, no interest payment is required.

(ii) If the utility keeps the deposit more than 30 days, payment of interest shall be made retroactive to the date of deposit.

(B) Payment of interest shall be made at the time a deposit is returned or credited to the customer's account.

(C) The deposit shall draw interest until the day it is returned or credited to the customer's account.

(4) **Notification to applicants and customers.** When a deposit is required, the NCTU shall explain to applicants or customers the terms and conditions related to deposits and refunds.

(5) **Records of deposits.** The NCTU shall:

(A) Keep records to show:

(i) the name and address of each depositor;

(ii) the amount and date of the deposit; and

(iii) each transaction concerning the deposit;

(B) Issue a receipt of deposit to each applicant or customer paying a deposit and provide means for a depositor to establish claim if the receipt is lost;

(C) Keep deposit records for one year after a deposit is refunded;

(D) Maintain each unclaimed deposit for at least four years;

(E) Make a reasonable effort to return an unclaimed deposit; and

(F) Upon the sale or transfer of any NCTU or any of its operating units, provide the buyer with all deposit records.

(6) **Refunding deposits.**

(A) If service is not connected, or is disconnected, the NCTU shall promptly refund the customer's deposit plus accrued interest on the balance in excess of the unpaid bills for service furnished.

(B) If residential service is disconnected, the NCTU shall ensure that the deposit amount for local telecommunications service is applied first to local telecommunications service charges.

(C) An NCTU shall refund the deposit and interest when the customer meets the NCTU's refund criteria.

(7) **Customer credit and deposit information.** An NCTU shall safeguard customer credit and deposit information in accordance with §26.122 of this title.

(c) **NCTU implementation.** NCTUs shall implement this section no later than March 1, 2001.

§26.26. Foreign Language Requirements.

(a) **Notification requirement.** A certificated telecommunications utility (CTU) shall inform Spanish-speaking applicants and customers how they can get the information in subsection (b)(1), (2), (3), and (6) of this section in Spanish. This may be accomplished by an informational sentence (tagline) in English and Spanish indicating that the information is available in Spanish, upon request.

(b) **Spanish information requirement.** A CTU shall provide the following in Spanish, upon the request of an applicant or customer:

(1) applicant and customer rights information contained in this subchapter;

(2) information on rates, key terms and conditions;

(3) new services, discount programs, and promotions;

(4) access to repair service and customer service;

(5) answers to billing inquiries; and

(6) ballots for services requiring a vote by ballot.

(c) **Additional information requirement.** A CTU that advertises, promotes, or markets a service or product in any language other than English or Spanish shall provide the information in subsection (b) of this section related to that service or product in that language, upon the request of an applicant or customer.

(d) **Non-dominant certificated telecommunications utility (NCTU) implementation.** NCTUs shall implement this section no later than March 1, 2001.

§26.27. Bill Payment and Adjustments.

(a) **Dominant certificated telecommunications utility (DCTU).**

(1) **Bill due date.** The bill provided to the customer shall include the payment due date, which shall not be less than 16 days after issuance.

(A) The issuance date is the postmark date on the envelope containing the bill or the issuance date on the bill if there is no postmark or envelope.

(B) Payment for service is delinquent if not received at the DCTU or at the DCTU's authorized payment agency by close of business on the due date.

(C) If the sixteenth day falls on a holiday or weekend, then the due date shall be the next work day after the sixteenth day.

(2) **Penalty on delinquent bills for retail service.** A DCTU providing any service to the state, including service to an agency in any branch of government, shall not assess a fee, penalty, interest, or other charge to the state for delinquent payment of a bill.

(3) **Billing adjustments.**

(A) **Service interruptions.** In the event a customer's service is interrupted other than by the negligence or willful act of the customer, and it remains interrupted for 24 hours or longer after being reported and after access to the premises is made available, an appropriate refund shall be made to the customer.

(i) The amount of refund shall be:

(I) determined on the basis of the known period of interruption, generally beginning from the time the service interruption is first reported; and

(II) the refund to the customer shall be the proportionate part of the month's flat rate charges for the period of days and that

portion of the service facilities rendered useless or inoperative.

(ii) The refund may be made by a credit on a subsequent bill.

(B) **Overbilling.** If charges are found to be higher than authorized by the DCTU's tariffs or the terms and conditions of service, an appropriate refund shall be made to the customer.

(i) The refund shall be made for the entire period of the overbilling.

(ii) If the overbilling is corrected within three billing cycles of the initial bill in error, interest is not required to be paid on the overcharge.

(iii) If the overbilling is not corrected within three billing cycles of the initial bill in error, interest shall be paid on the amount of the overcharges. The minimum interest to be paid shall be based on the rate set by the commission on December 1 of the preceding year, compounded monthly, and accruing from the date of payment or the initial date of the bill in error.

(iv) The refund may be made by a credit on a subsequent bill, unless the customer requests otherwise.

(C) **Underbilling.** If charges are found to be lower than authorized by the DCTU's tariffs or terms and conditions of service, or if the DCTU failed to bill the customer for service, then:

(i) The customer may be backbilled for the amount that was underbilled for no more than six months from the date the error

was discovered unless underbilling is a result of theft of service by the customer.

(ii) Service may be disconnected if the customer fails to pay charges arising from an underbilling.

(iii) If the underbilling is $50 or more, the DCTU shall offer the customer a deferred payment plan option for the same length of time as that of the underbilling. A deferred payment plan need not be offered to a customer whose underpayment is due to theft of service.

(iv) Interest on underbilled amounts shall:

(I) not be charged unless such amounts are found to be the result of theft of service by the customer; and

(II) not exceed an amount based on the rate set by the commission on December 1 of the preceding year, compounded monthly, and accruing from the day the customer is found to have first tampered with, bypassed, or diverted service.

(4) **Disputed bills.** If there is a dispute between a customer and a DCTU about any bill for DCTU service, the DCTU shall:

(A) investigate and report the results to the customer; and

(B) inform the customer of the complaint procedures of the commission in accordance with §26.30 of this title (relating to Complaints), if the dispute is not resolved.

(5) **Notice of alternative payment programs or payment assistance.** When a customer contacts a DCTU and indicates inability to pay a bill or need of assistance with payment, the DCTU shall inform the customer of all alternative payment options and payment assistance programs available from the DCTU, such as payment arrangements, deferred payment plans, and disconnection moratoriums for the ill, as applicable, and of the eligibility requirements and application procedure for each.

(6) **Payment arrangement.** A payment arrangement is any agreement between the DCTU and a customer that allows the customer to pay the outstanding bill after its due date but before the due date of the next bill.

(A) A payment arrangement may be established in person or by telephone.

(B) If the DCTU issued a suspension or disconnection notice before the payment arrangement was made, that suspension or disconnection shall be suspended until after the due date for the payment arrangement.

(C) If a customer does not fulfill the obligations of the payment arrangement, the DCTU may suspend or disconnect service after the later of the due date for the payment arrangement or the suspension or disconnection date indicated in the notice in accordance with §26.28 of this title (relating to Suspension or Disconnection of Service), without issuing an additional notice.

(7) **Deferred payment plan.** A deferred payment plan is any written agreement between the DCTU and a customer that allows a customer to pay an outstanding bill in installments that extend beyond the due date of the next bill.

(A) The terms of a deferred payment plan may be established in person or by telephone, but must be put in writing to be effective.

(B) The DCTU shall offer a deferred payment plan to any residential customer, including a guarantor of any residential customer, who has expressed an inability to pay all of the bill, if that customer has not been issued more than two suspension or disconnection notices during the preceding 12 months.

(C) Every deferred payment plan shall provide that the delinquent amount may be paid in equal installments over at least three billing cycles.

(D) When a residential customer has received service from its current DCTU for less than three months, the DCTU is not required to offer a deferred payment plan if the residential customer lacks:

(i) sufficient credit; or

(ii) a satisfactory history of payment for service from a previous DCTU.

(E) Every deferred payment plan offered by a DCTU:

(i) shall state, immediately preceding the space provided for the customer's signature and in boldface type no smaller than 14 point size, the following: **"THIS IS A BINDING CONTRACT"** followed by **"If you are not satisfied with this contract, or if agreement was made by telephone and you feel this contract does not reflect your understanding of that agreement, contact the utility immediately and do not sign this contract. If you do**

not contact the utility, or if you sign this agreement, you may give up your right to dispute the amount due under the agreement except for the utility's failure or refusal to comply with the terms of this agreement."

(I) In addition, if the customer and the DCTU representative or agent meet in person, the DCTU representative shall read the preceding statement to the customer.

(II) The DCTU shall provide information to the customer as necessary in accordance with §26.26 of this title (relating to Foreign Language Requirements) to make the preceding statement understandable to the customer;

(ii) may include a 5.0% penalty for late payment but shall not include a finance charge;

(iii) shall state the length of time covered by the plan;

(iv) shall state the total amount to be paid;

(v) shall state the specific amount of each installment;

(vi) shall allow the DCTU to disconnect service if a customer does not fulfill the terms of the deferred payment plan;

(vii) shall not refuse a customer participation in such a program on the basis of race, nationality, religion, color, sex, marital status, income level, or source of income and shall not unreasonably refuse a customer participation in such a program on the basis of geographic location;

(viii) shall be signed by the customer and a copy of the signed plan shall be provided to the customer; and

(ix) shall allow either the customer or the DCTU to renegotiate the deferred payment plan, if the customer's economic or financial circumstances change substantially during the time of the plan.

(F) A DCTU may disconnect a customer who does not meet the terms of a deferred payment plan.

(i) The DCTU may not disconnect service until a disconnection notice in accordance with §26.28 of this title has been issued to the customer indicating that the customer has not met the terms of the plan.

(ii) The DCTU may renegotiate the deferred payment plan agreement before disconnection.

(iii) No additional notice is required if the customer:

(I) did not sign the deferred payment plan;

(II) is not otherwise fulfilling the terms of the plan; and

(III) was previously provided a disconnection notice for the outstanding amount.

(8) **Residential partial payments.** Residential service payment shall first be allocated to basic local telecommunications service**.**

(b) **Nondominant certificated telecommunications utility (NCTU).**

(1) **Bill due date.** The bill provided to the customer shall include the payment due date, which shall not be less than 16 days after issuance.

(A) The issuance date is the postmark date on the envelope containing the bill or the issuance date on the bill if there is no postmark or envelope.

(B) Payment for service is delinquent if not received at the NCTU or at the NCTU's authorized payment agency by close of business on the due date.

(C) If the sixteenth day falls on a holiday or weekend, then the due date shall be the next work day after the sixteenth day.

(D) If the due date shown on the bill falls on a holiday or weekend, an NCTU shall include a statement on the bill or in the terms and conditions of service that informs the customer that the due date is extended to the next work day.

(2) **Penalty on delinquent bills for retail service.** An NCTU providing any service to the state, including service to an agency in any branch of government, shall not assess a fee, penalty, interest, or other charge to the state for delinquent payment of a bill.

(3) **Billing adjustments.**

(A) **Overbilling.** If charges are higher than the NCTU's tariff, schedule, or list on file with the commission in accordance with §26.89 of this title (relating to Information Regarding Rates and Services of Nondominant Carriers), terms and conditions of service, or a customer-specific contract, an appropriate refund shall be made to the customer.

(i) The refund shall be made for the entire period of the overbilling.

(ii) If the overbilling is corrected within three billing cycles of the initial bill in error, interest is not required to be paid on the overcharge.

(iii) If the overbilling is not corrected within three billing cycles of the initial bill in error, interest shall be paid on the amount of the overcharges. The minimum interest to be paid shall be based on the rate set by the commission on December 1 of the preceding year, compounded monthly, and accruing from the date of payment or the initial date of the bill in error.

(iv) The refund may be made by a credit on a subsequent bill, unless the customer requests otherwise.

(B) **Underbilling.** If charges are found to be lower than authorized by the NCTU's tariff, schedule, or list on file with the commission in accordance with §26.89 of this title, terms and conditions of service, or a customer-specific contract, or if the NCTU failed to bill the customer for service, then:

(i) The customer may be backbilled for the amount that was underbilled for no more than six months from the date the initial error was discovered unless underbilling is a result of theft of service by the customer.

(ii) Service may be disconnected if the customer fails to pay charges arising from an underbilling.

(iii) If the underbilling is $50 or more, the NCTU shall offer the customer a payment plan option for the same length of time as that of the underbilling. A payment plan need not be offered to a customer whose underpayment is due to theft of service.

(iv) Interest on underbilled amounts shall:

(I) not be charged unless such amounts are found to be the result of theft of service by the customer; and

(II) not exceed an amount based on the rate set by the commission on December 1 of the preceding year, compounded monthly, and accruing from the day the customer is found to have first tampered with, bypassed, or diverted service.

(4) **Disputed bills.** If there is a dispute between a customer and an NCTU about any bill for NCTU service, the NCTU shall:

(A) investigate and report the results to the customer; and

(B) inform the customer of the complaint procedures of the commission in accordance with §26.30 of this title if the dispute is not resolved.

(5) **Notice of alternative payment programs or payment assistance.** When a customer contacts an NCTU and indicates inability to pay a bill or need of assistance with payment, the NCTU shall inform the customer of any alternative payment options and payment assistance programs available to the customer.

(6) **Residential partial payments.** Residential service payment shall first be allocated to basic local telecommunications service**.**

(c) **NCTU implementation.** NCTUs shall implement this section no later than March 1, 2001.

§26.28. Suspension or Disconnection of Service.

(a) **Dominant certificated telecommunications utility (DCTU).**

(1) **Suspension or disconnection policy.** If a DCTU chooses to suspend or disconnect a customer's basic local telecommunications service, it must follow the procedures in this subsection or modify them in ways that are more generous to the customer in terms of the cause for suspension or disconnection, the timing of the suspension or disconnection notice, and the period between notice and suspension or disconnection. Each DCTU is encouraged to develop specific policies for suspension and disconnection that treat its customers with dignity and respect for customers' or members' circumstances and payment history, and to implement those policies in ways that are consistent and non-discriminatory. Suspension or disconnection are options allowed by the commission, not requirements placed upon the DCTU by the commission.

(2) **Suspension or disconnection with notice.** After proper notice pursuant to paragraph (7) of this subsection, a DCTU may suspend or disconnect basic local telecommunications service for any of the following reasons:

(A) failure to pay tariffed charges for local telecommunications services or make deferred payment arrangements by the date of suspension or disconnection;

(B) failure of a residential customer to pay long distance charges incurred after toll blocking was imposed;

(C) failure of a non-residential customer to pay long distance charges only where the DCTU bills those charges to the customer pursuant to its tariffs or billing and collection contracts, or make deferred payment arrangements by the date of suspension or disconnection;

(D) failure to comply with the terms of a deferred payment agreement except as provided in §26.29 of this title (relating to Prepaid Local Telephone Service (PLTS));

(E) violation of the DCTU's rules on the use of service in a manner which interferes with the service of others or the operation of nonstandard equipment, if a reasonable attempt has been made to notify the customer and the customer has a reasonable opportunity to remedy the situation;

(F) failure to pay a deposit pursuant to §26.24 of this title (relating to Credit Requirements and Deposits); or

(G) failure of the guarantor to pay the amount guaranteed, when the DCTU has a written agreement, signed by the guarantor, that allows for disconnection of the guarantor's service for nonpayment.

(3) **Suspension or disconnection without notice.** Basic local telecommunications service may be suspended or disconnected without notice, except as provided in §26.29 of this title, for any of the following reasons:

(A) where service is connected without authority;

(B) where service was reconnected without authority; or

(C) where there are instances of tampering with the DCTU's equipment, evidence of theft of service, or other acts to defraud the DCTU.

(4) **Suspension or disconnection prohibited.** Basic local telecommunications service may not be suspended or disconnected for any of these reasons:

(A) failure to pay for any charges that are not provided for in a DCTU's tariffs;

(B) failure to pay for a different type or class of utility service unless charges were included on the bill at the time service was initiated;

(C) failure to pay charges resulting from underbilling that is more than six months before the current billing, except for theft of service;

(D) failure to pay disputed charges until a determination is made on the accuracy of the charges; or

(E) failure of a residential customer to pay for any charges other than for tariffed residential local telecommunications services, except for the nonpayment of long distance charges incurred after toll blocking was imposed.

(5) **Suspension or disconnection on holidays or weekends.** A DCTU shall not suspend or disconnect service on holidays or weekends, or the day before a holiday or weekend, unless DCTU personnel are available on those days to take

payments and reconnect service. A DCTU may suspend or disconnect service on holidays or weekends, or the day before a holiday or weekend, when:

(A) a dangerous condition exits;

(B) notice is not required pursuant to paragraph (3) of this subsection; or

(C) the customer requests disconnection.

(6) **Suspension or disconnection for ill and disabled.** No DCTU may suspend or disconnect service at the permanent residence of a delinquent customer if that customer establishes that such action will prevent the customer from summoning emergency medical help for someone who is seriously ill residing at that residence.

(A) Each time a customer seeks to avoid suspension or disconnection of service under this subsection, the customer before the date of suspension or disconnection shall:

(i) have the person's attending physician (for purposes of this subsection, the term "physician" shall mean any public health official, including, but not limited to, medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar public health official) contact the DCTU by the stated date of disconnection;

(ii) have the person's attending physician submit a written statement to the DCTU; and

(iii) enter into a deferred payment plan.

(B) The prohibition against suspension or disconnection provided by this subsection shall last 63 days from the issuance of the DCTU bill or a shorter period agreed upon by the DCTU and the customer or physician.

(7) **Suspension and disconnection notices.** Any suspension or disconnection notice issued by a DCTU to a customer shall:

(A) not be issued to the customer before the first day after the bill is due. Payment of the delinquent bill at a DCTU's authorized payment agency is considered payment to the DCTU;

(B) be a separate mailing or hand delivery or sent electronically if requested by the customer, with a stated date of suspension or disconnection and with the words "suspension notice," or "disconnection notice," or similar language prominently displayed on the notice;

(C) have a suspension or disconnection date that is not less than ten days after the notice is issued;

(D) be in English and Spanish;

(E) for residential customers, indicate the specific amount owed for tariffed local telecommunications services required to maintain basic local telecommunications service; and

(F) include a statement notifying customers that if they need assistance paying their bill, or are ill and unable to pay their bill, they may be able to make some alternative payment arrangement or establish a deferred payment plan. The notice shall advise customers to contact the DCTU for more information.

(8) **Residential customer payment allocations.** Payment allocations related to basic local telecommunications service suspension or disconnection are as follows:

(A) Payments shall first be allocated to basic local telecommunications service.

(B) If services are bundled, the rate of basic local telecommunications service shall be the DCTU's charge for stand-alone basic local telecommunications service.

(9) **Toll blocking.**

(A) **DCTU initiated.** The DCTU may toll block a residential customer for the nonpayment of long distance charges.

(B) **Long distance carrier initiated.** The DCTU shall toll block a residential customer at the request and expense of a long distance carrier due to the nonpayment of long distance charges. The DCTU shall not charge the long distance carrier more than $10.00 for one-time installation nor more than $1.50 per month for toll blocking.

(C) **Access to toll-free numbers.** Where technically capable, toll blocking shall allow access to toll-free numbers.

(D) **Nondiscriminatory application.** The DCTU shall not apply toll blocking in an unreasonably preferential, prejudicial, or discriminatory manner.

(E) **Notice requirement.** The DCTU shall notify the customer within 24 hours of initiating toll blocking.

(10) **Release of telephone line.**

(A) Upon a request to switch a current customer to another local service provider, the DCTU shall release the customer's telephone line and number to the preferred provider in a manner to expedite the switch without disruption in service.

(B) Upon a request to switch a suspended customer to another local service provider, the DCTU shall release the customer's telephone line and number within five days after the request is received. Upon a request to switch a disconnected customer to another local service provider, the DCTU shall release the customer's telephone line within five days after the request is received.

(C) A DCTU shall not refuse to release a customer's telephone line and number due to the non-payment of a bill.

(b) **Non-dominant certificated telecommunications utility (NCTU).**

(1) **Suspension or disconnection policy.** If an NCTU chooses to suspend or disconnect a customer's basic local telecommunications service, it must follow the procedures in this subsection or modify them in ways that are more generous to the customer in terms of the cause for suspension or disconnection, the timing of the suspension or disconnection notice, and the period between notice and suspension or disconnection. Each NCTU is encouraged to develop specific policies for suspension and disconnection that treat its customers with dignity and respect for customers' or members' circumstances and payment history, and to implement those policies in ways that are consistent and non-discriminatory.

Suspension or disconnection are options allowed by the commission, not requirements placed upon the NCTU by the commission.

(2) **Suspension or disconnection with notice.** After proper notice pursuant to paragraph (6) of this subsection, an NCTU may suspend or disconnect basic local telecommunications service for any legal reason that is clearly disclosed in the customer's terms and conditions of service.

(3) **Suspension or disconnection without notice.** Basic local telecommunications service may be suspended or disconnected without notice for any of the following reasons:

(A) where service is connected without authority;

(B) where service was reconnected without authority; or

(C) where there are instances of tampering with the NCTU's equipment, evidence of theft of service, or other acts to defraud the NCTU.

(4) **Suspension or disconnection prohibited.** Basic local telecommunications service may not be suspended or disconnected for any of the following reasons:

(A) failure to pay for any charges that are not provided for in an NCTU's tariff, schedule, list, terms and conditions of service, or customer-specific contract;

(B) failure to pay for a different type or class of utility service unless charges were included on the bill at the time service was initiated;

(C) failure to pay charges resulting from underbilling that is more than six months before the current billing, except for theft of service;

(D) failure to pay disputed charges until a determination is made on the accuracy of the charges; or

(E) failure of a residential customer to pay for any charges other than for residential local telecommunications services, except for the nonpayment of long distance charges incurred after toll blocking was imposed.

(5) **Suspension or disconnection on holidays or weekends.** An NCTU shall not suspend or disconnect on holidays or weekends, or the day before a holiday or weekend, unless NCTU personnel are available on those days to take payments and reconnect service. An NCTU may suspend or disconnect service on holidays or weekends, or the day before a holiday or weekend, when:

(A) a dangerous condition exits;

(B) notice is not required pursuant to paragraph (3) of this subsection; or

(C) the customer requests disconnection.

(6) **Suspension and disconnection notices.** Any suspension or disconnection notice issued by an NCTU to a customer must:

(A) not be issued to the customer before the first day after the bill is due. Payment of the delinquent bill at an NCTU's authorized payment agency is considered payment to the NCTU;

(B) be a separate mailing or hand delivery or sent electronically if requested by the customer, with a stated date of suspension or disconnection and with the words "suspension notice," or "disconnection notice," or similar language prominently displayed on the notice;

(C) have a suspension or disconnection date that is not less than ten days after the notice is issued;

(D) be in English and Spanish; and

(E) for residential customers, indicate the specific amount owed for local telecommunications services required to maintain basic local telecommunications service.

(7) **Residential customer payment allocations.** Payment allocations related to basic local telecommunications service suspension or disconnection are as follows:

(A) Payments shall first be allocated to basic local telecommunications service.

(B) If services are bundled, the rate of basic local telecommunications service shall be the NCTU's charge for stand-alone basic local telecommunications service.

(8) **Toll blocking.**

(A) **NCTU initiated.** The NCTU may toll block a residential customer for the nonpayment of long distance charges.

(B) **Long distance carrier initiated.** The NCTU shall toll block a residential customer at the request and expense of a long distance carrier due to the nonpayment of long distance charges. The NCTU shall not charge the long distance carrier more than $10.00 for one-time installation nor more than $1.50 per month for toll blocking. If an NCTU does not have the technical capability to initiate a toll block, then it shall refer the request to the local exchange company that can implement the toll block.

(C) **Access to toll-free numbers.** Where technically capable, toll blocking shall allow access to toll-free numbers.

(D) **Nondiscriminatory application.** The NCTU shall not apply toll blocking in an unreasonably preferential, prejudicial, or discriminatory manner.

(E) **Notice requirement.** The NCTU shall notify the customer within 24 hours of initiating toll blocking.

(9) **Release of telephone line.**

(A) Upon a request to switch a current customer to another local service provider, the NCTU shall release, or cause to release, the customer's telephone line and number to the preferred provider in a manner to expedite the switch without disruption in service.

(B) Upon a request to switch a suspended customer to another local service provider, the NCTU shall release, or cause to release, the customer's telephone line and number within five days after the request is received. Upon a request to switch a disconnected customer to another local service provider, the NCTU shall release, or cause to release, the customer's telephone line within five days after the request is received.

(C) An NCTU shall not refuse to release a customer's or former customer's telephone line and number due to the non-payment of a bill.

(c) **NCTU implementation.** NCTUs shall implement this section no later than March 1, 2001.

§26.30. Complaints.

(a) **Complaints to a certificated telecommunications utility (CTU).** A customer or applicant for service (complainant) may submit a complaint to a CTU either in person, by letter, telephone, or any other means determined by the CTU.

(1) **Initial investigation.** The CTU shall investigate and advise the complainant of the results of the investigation within 21 days of receipt of the complaint. A CTU shall inform customers of the right to receive these results in writing.

(2) **Supervisory review by the CTU.** If a complainant is not satisfied with the initial response to the complaint, the complainant may request a supervisory review by the CTU.

(A) A CTU supervisor shall conduct the review and shall inform the complainant of the results of the review within ten days of receipt of the complainant's request for a review. A CTU shall inform customers of the right to receive these results in writing.

(B) A complainant who is dissatisfied with a CTU's supervisory review shall be informed of:

(i) the right to file a complaint with the commission;

(ii) the commission's informal complaint resolution process;

(iii) the following contact information for the commission:

(I) Mailing Address: Public Utility Commission of Texas, Customer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326;

(II) Phone Number: (512) 936-7120 or in Texas (toll-free) 1-888-782-8477;

(III) FAX: (512) 936-7003;

(IV) E-mail address: customer@puc.state.tx.us;

(V) Internet address: http.//www.puc.state.tx.us;

(VI) Telecommunications Device for the Deaf (TTY): (512) 936-7136; and

(VII) Relay Texas (toll-free): 1-800-735-2989.

(b) **Complaints to the commission.**

(1) **Informal complaints.**

(A) The complaint to the commission should include:

(i) The complainant's name, address, and telephone number.

(ii) The name of the CTU or subsidiary company against which the complaint is being made.

(iii) The customer's account or phone number.

(iv) An explanation of the facts relevant to the complaint.

(v) Any other information or documentation which supports the complaint.

(B) Upon receipt of a complaint from the commission, a CTU shall investigate and advise the commission in writing of the results of its investigation within 21 days of the date forwarded by the commission.

(C) The commission shall:

(i) review the CTU's investigative results;

(ii) determine a resolution for the complaint; and

(iii) notify the complainant and the CTU in writing of the resolution.

(D) While any informal complaint process is ongoing at the commission:

(i) basic local telecommunications service may not be suspended or disconnected for the nonpayment of disputed charges; and

(ii) a customer is obligated to pay any undisputed portion of the bill.

(E) The CTU shall keep a record of any informal complaint forwarded to it by the commission for two years after the determination of that complaint.

(i) This record shall show the name and address of the complainant, and the date, nature, and adjustment or disposition of the complaint.

(ii) Protests regarding commission-approved rates or charges that require no further action by the CTU need not be recorded.

(2) **Formal complaints.** If the complainant is not satisfied with the results of the informal complaint process, the complainant may file a formal complaint with the commission. This process may include the formal docketing of the complaint as provided in the commission's Procedural Rules, §22.242 of this title (relating to Complaints).

§26.31. Disclosures to Applicants and Customers.

(a) **Certificated telecommunications utilities (CTU).** These disclosure requirements shall apply only to residential customers and business customers with five or fewer customer access lines.

(1) **Promotional requirements.** Promotions, including, but not limited to advertising and marketing, conducted by any CTU shall comply with the following:

(A) If any portion of a promotion is translated into another language, then all portions of the promotion shall be translated into that language. Promotions containing a single informational line or sentence in another language to advise persons how to obtain the same promotional information in a different language are exempt from this requirement.

(B) Promotions shall not be fraudulent, unfair, misleading, deceptive, or anti-competitive as prohibited by federal and state law.

(2) **Prior to acceptance of service.** Each CTU shall provide the following information to applicants before any acceptance of service:

(A) notice that the customer will receive the information packet described in paragraphs (3) and (4) of this subsection;

(B) an explanation of each product or service being offered;

(C) a description of how each charge will appear on the telephone bill;

(D) any applicable minimum contract service terms;

(E) disclosure of any and all money that must be paid prior to installation of new service or transfer of existing service to a new location and whether or not the money is refundable;

(F) disclosure of construction charges in accordance with §26.22 of this title (relating to Request for Service);

(G) information about any necessary change in the applicant's telephone number;

(H) disclosure of the company's cancellation policy; and

(I) information on whom to call and a working toll-free number for customer inquiries.

(3) **Terms and conditions of service.** A CTU shall provide information regarding terms and conditions of service to customers in writing and free of charge at the initiation of service. Upon request, customers are entitled to receive an additional copy of the terms and conditions of service once annually free of charge. Any contract offered by a CTU must include the terms and conditions of service statement. A CTU may not offer a customer a contract or terms and conditions of service statement which waives the customer's rights under law or commission rule.

(A) The information shall be:

(i) sent to new customers before payment for a full bill is due;

(ii) clearly labeled to indicate it contains the terms and conditions of service;

(iii) provided in a readable format written in plain, non-technical language; and

(iv) provided in the same languages in which the CTU markets service to a customer.

(B) The following information shall be included:

(i) all rates and charges as they will appear on the telephone bill;

(ii) an itemization of any charges which may be imposed on the customer, including but not limited to, charges for late payments and returned checks;

(iii) a full description of each product or service to which the customer has subscribed;

(iv) any applicable minimum contract service terms and any fees for early termination;

(v) any and all money that must be paid prior to installation of new service or transfer of existing service to a new location and whether or not the money is refundable;

(vi) applicable construction charges in accordance with §26.22 of this title;

(vii) any necessary change in the applicant's telephone number;

(viii) the company's cancellation policy;

(ix) a working toll-free number for customer inquiries; and

(x) the provider's legal or "doing business as" name used for providing telecommunications services in the state.

(4) **Customer rights.** A CTU shall provide information regarding customer rights to customers in writing and free of charge at the initiation of service.

(A) The information in subparagraph (C) of this paragraph shall be:

(i) sent to new customers before payment for a full bill is due;

(ii) clearly labeled to indicate it contains the customer rights;

(iii) provided in a readable format written in plain, non-technical language; and

(iv) provided in the same languages in which the CTU markets service to a customer.

(B) The CTU shall also provide:

(i) the information in subparagraph (C) of this paragraph to customers at least every other year at no charge; or

(ii) a printed statement on the bill or a billing insert identifying the location of the information in subparagraph (C) of this paragraph. The statement shall be provided to customers every six months.

(C) The following information shall be included:

(i) the CTU's credit requirements and the circumstances under which a deposit or an additional deposit may be required, how a deposit is calculated, the interest paid on deposits, and the time frame and requirement for return of the deposit to the customer and any other terms and conditions related to deposits;

(ii) the time allowed to pay outstanding bills and the amount and conditions under which penalties may be applied to delinquent bills;

(iii) grounds for suspension and/or disconnection of service;

(iv) the steps that must be taken before a CTU may suspend and/or disconnect service;

(v) the steps for resolving billing disputes with the CTU and how disputes affect suspension and/or disconnection of service;

(vi) information on alternative payment plans offered by the CTU, including, but not limited to, payment arrangements and deferred payment plans, as well as a statement that a customer has the right to request these alternative payment plans;

(vii) the steps necessary to have service restored and/or reconnected after involuntary suspension or disconnection;

(viii) a customer's right to continue local service as long as full payment for local service is timely made;

(ix) information regarding protections against unauthorized billing charges ("cramming") and selection of telecommunications utilities ("slamming") as required by §26.32 of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming")) and §26.130 of this title (relating to Selection of Telecommunications Utilities), respectively;

(x) information regarding telephone solicitation as required by §26.126 of this title (relating to Telephone Solicitation);

(xi) information about customer proprietary network information as required by §26.122(f) of this title (relating to Customer Proprietary Network Information);

(xii) the customer's right to file a complaint with the CTU, the procedures for a supervisory review, and right to file a complaint with the commission regarding any matter concerning the CTU's service. The commission's contact information: Public Utility Commission of Texas, Customer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or in Texas (toll-free) 1-888-782-8477, fax (512) 936-7003, e-mail address: customer@puc.state.tx.us, Internet address: www.puc.state.tx.us, TTY (512) 936-7136, and Relay Texas (toll-free) 1-800-735-2989, shall accompany this information;

(xiii) the hours, addresses, and telephone numbers of CTU offices where bills may be paid and information may be obtained, or a toll-free number at which the customer may obtain this information;

(xiv) a toll-free telephone number or the equivalent (such as use of WATS or acceptance of collect calls) that customers may call to report service problems or make billing inquiries;

(xv) a statement that CTU services are provided without discrimination as to a customer's race, color, sex, nationality, religion, marital

status, income level, source of income, or from unreasonable discrimination on the basis of geographic location;

(xvi) a summary of the company's policy regarding the provision of credit history based upon the credit history of a customer's former spouse;

(xvii) notice of any special services such as readers or notices in Braille, if available, and the telephone number of the text telephone for the deaf or hard of hearing at the commission;

(xviii) how customers with physical disabilities, and those who care for them, can identify themselves to the CTU so that special action can be taken to appropriately inform these persons of their rights; and

(xix) if a CTU is offering Lifeline or Tel-Assistance, how information about customers who qualify for Lifeline or Tel-Assistance may be shared between state agencies and their local phone service provider.

(5) **Notice of changes.** A CTU shall provide customers written notice between 30 and 60 calendar days in advance of a material change in the terms and conditions of service or customer rights and shall give the customer the option to decline any material change in the terms and conditions of service and cancel service without penalty due to the material change in the terms and conditions of service. This paragraph does not apply to changes that are beneficial to the customer such as a price decrease or mandated regulatory changes.

(6) **Right of cancellation.**

(A) A CTU shall provide all of its residential applicants and customers the right of rescission in accordance with applicable law.

(B) If a residential applicant or customer will incur an obligation exceeding 31 days, a CTU shall promptly provide the applicant or customer with the terms and conditions of service after the applicant or customer has provided authorization to CTU. The CTU shall offer the applicant or customer a right to cancel the contract without penalty or fee of any kind for a period of six business days after the terms and conditions of service are mailed or sent electronically to the applicant or customer.

(b) **Dominant certificated telecommunications utility (DCTU).** In addition to the requirements of subsection (a) of this section, the following requirements shall apply to residential customers and business customers with five or fewer customer access lines.

(1) **Prior to acceptance of service.** Before signing applicants or accepting any money for new residential service or transferring existing residential service to a new location, each DCTU shall provide to applicants information:

(A) about the DCTU's lowest-priced alternatives, beginning with the least cost option, and the range of service offerings available at the applicant's location with full consideration to applicable equipment options and installation charges; and

(B) that clearly informs applicants about the availability of Lifeline and Tel-Assistance.

(2) **Customer rights.**

(A) If a DCTU provides its customers with the same information as required by subsection (a)(4)(C) of this section in the telephone directories provided to each customer pursuant to §26.128 of this title (relating to Telephone Directories), the DCTU shall provide a printed statement on the bill or a billing insert identifying the location of the information. The statement or billing insert shall be provided to customers every six months.

(B) The information required by subsection (a)(4)(C) of this section and this subsection shall be provided in English and Spanish; however, a DCTU is exempt from the Spanish language requirement if 10% or fewer of its customers are exclusively Spanish-speaking. If the DCTU is exempt from the Spanish language requirement, it shall notify all customers through a statement in both English and Spanish, in the customer rights, that the information is available in Spanish from the DCTU, both by mail and at the DCTU's offices.

(C) The information required in subsection (a)(4)(C) of this section shall also include:

(i) the customer's right to information about rates and services;

(ii) the customer's right to inspect or obtain at reproduction cost a copy of the applicable tariffs and service rules;

(iii) information on prohibitions for disconnection of local service for the ill and disabled;

(iv) information on the availability of prepaid local telephone service as required by §26.29 of this title (relating to Prepaid Local Telephone Service (PLTS)); and

(v) information regarding privacy issues as required by §26.121 of this title (relating to Privacy Issues).

(c) **Non-dominant certificated telecommunications utility (NCTU) implementation.** NCTUs shall implement this section no later than March 1, 2001.

This agency hereby certifies that the rules, as adopted, have 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 §26.21, relating to General Provisions, §26.22, relating to Request for Service, §26.23, relating to Refusal of Service, §26.24, relating to Credit Requirements and Deposits, §26.26, relating to Foreign Language Requirements, §26.27, relating to Bill Payments and Adjustments, §26.28, relating to Suspension or Disconnection of Service, §26.30, Complaints, and §26.31, relating to Disclosures to Applicants and Customers, are hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 6th DAY OF DECEMBER 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