

The Public Utility Commission of Texas (commission) adopts an amendment to §26.274, relating to Imputation, with no changes to the proposed text as published in the September 1, 2000, *Texas Register* (25 TexReg 8564). The amendment incorporates changes to provide consistency with the provisions contained in Senate Bill 560, 76th Legislative Session, which revised the Public Utility Regulatory Act (PURA). The amendment to §26.274 reflects the modification of PURA §58.054 and §59.021(c), as well as the legislative repeal of PURA §§58.101 - 58.104 and the revision of PURA Chapter 58, Subchapter E. The amendment was adopted under Project Number 21169.

The commission received no comments on the proposed amendment to §26.274.

This new amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2000) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 58.054, and 59.021, and Chapter 58, Subchapter E.

§26.274. Imputation.

- (a) **Application.** This section applies to incumbent local exchange companies (ILECs) as that term is defined in the Public Utility Regulatory Act (PURA), §51.002(3). The obligations prescribed by this section may be applied to an ILEC with fewer than one million access lines in the state only on a bona fide request from a party having a justiciable interest.
- (b) **Purpose.** This section implements the state's regulatory policy to prevent an ILEC from selling a wholesale service or function to another telecommunications utility at a price that is higher than the rate the ILEC implicitly includes in retail services it provides.
- (c) **Definition.** The term "competitively available" when used in this section, shall mean a service that may be obtained from at least one source other than the ILEC to an extent sufficient to discipline the price charged by the ILEC in the state. In the context of an imputation test for a retail service, there shall be a rebuttable presumption that a wholesale service is competitively available if:
 - (1) the ILEC providing the retail service has elected under the Public Utility Regulatory Act, Chapter 58 and the wholesale service is a competitive service; or
 - (2) the service is available from a competitor, other than a pure reseller, to 60% of the access lines to which the retail service is or will be available.

- (d) **Services for which imputation is required.** Except as provided otherwise in subsection (e) of this section, imputation of the price of a wholesale service is required in establishing the rates for a retail service if:
- (1) the retail service cannot be purchased at wholesale rates for resale by a competitor; and
 - (2) a wholesale service that is not competitively available is necessary for the competitor to provide its competing service.
- (e) **Rates to which imputation is not required.** The price of a retail local exchange telephone service that is a basic network service or a retail local exchange telephone service whose rate is capped pursuant to PURA Chapter 59 shall not be subject to the requirements of this section unless:
- (1) the price cap under PURA Chapter 58 or the election period under PURA Chapter 59 has expired;
 - (2) the price cap applicable to the service is raised;
 - (3) the ILEC's rates for local exchange telephone service are restructured or rebalanced; or
 - (4) the service is reclassified from a basic network service to a non-basic service.
- (f) **Imputation on a service-by-service basis.** Imputation shall be applied on a service-by-service basis, not on a rate-element-by-rate-element basis.

(g) **Imputation methodology.** An imputation study filed pursuant to this section shall demonstrate that the price the ILEC charges for a retail service recovers the cost of providing the service. Alternatively, the study may demonstrate that, no later than the second year after the retail service is first offered, the revenue the ILEC receives from the service recovers the cost of providing the service. For purposes of this section, the cost of providing a retail service is defined as the sum of:

- (1) specifically tariffed premium rates for the noncompetitive services or service functions, or elements of these noncompetitive services or service functions (or their functional equivalents) that are used to provide the retail service;
- (2) the total service long-run incremental costs of the competitive services or service functions that are used;
- (3) any costs, not otherwise reflected in paragraphs (1) or (2) of this subsection, that are specifically associated with provision of the retail service or group of services; and
- (4) any cost or surcharge associated with an explicit subsidy that is applied to all providers of the retail service for the purpose of promoting universal service.

(h) **Imputation study for a new service or a revised rate.** In forecasting revenue and costs in an imputation study for a new service or a revised rate, it shall be the responsibility of the ILEC to demonstrate:

- (1) the validity of the data on which the forecast is based;
- (2) the validity of the statistical method or model on which the forecast is based; and

(3) the validity of the interpretation and application of the forecast in the imputation study.

(i) **Timing of imputation studies.** An imputation study shall be filed by an ILEC under any of the circumstances set out in paragraphs (1)-(5) of this subsection.

(1) Upon complaint by a party, and a finding by the commission that an imputation study is in the public interest, or on the commission's own motion. Upon receiving a complaint calling for an imputation study, the commission shall determine within 45 days whether an imputation study shall be required.

(2) When an ILEC files an application to reduce a rate for a retail service for which imputation is required.

(3) When an ILEC applies to increase a rate for a wholesale service that:

(A) is not competitively available; and,

(B) is necessary for a competitor to provide its competing service or is a component of a retail service for which imputation is required.

(4) In conjunction with an application to provide a new service or contract that uses a wholesale service that:

(A) is not competitively available; and

(B) is necessary for a competitor to provide its competing service.

(5) As otherwise ordered by the commission.

- (j) **Confidentiality of data.** If a party classifies data filed with the commission as confidential, the party should designate the section of the Public Information Act (Chapter 522, Texas Government Code) that excepts the information from public disclosure. The commission will treat such information as confidential subject to the provisions of the Public Information Act and protective orders issued by the commission applicable to the data.

- (k) **Waiver provisions.**
 - (1) The commission may waive the imputation requirement for a public interest service such as 9-1-1 or dual party relay service if the commission determines that the waiver is in the public interest.
 - (2) After notice and hearing, and subject to the requirements of law, the commission may waive any provision of this section for good cause.

This agency hereby certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §26.274, relating to Imputation, is hereby adopted with no changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 2nd DAY OF NOVEMBER, 2000.

PUBLIC UTILITY COMMISSION OF TEXAS

Chairman Pat Wood, III

Commissioner Judy Walsh

Commissioner Brett A. Perlman