

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

### Subchapter L. WHOLESALE MARKET PROVISIONS.

#### §26.276. Unbundling.

- (a) **Purpose.** The purpose of this section is to implement Public Utility Regulatory Act (PURA) §60.021, which requires an incumbent local exchange company (ILEC), at a minimum, to unbundle its network to the extent ordered by the Federal Communications Commission (FCC).
- (b) **Application.**
- (1) The provisions of this section apply, as of its effective date, to each ILEC that serves one million or more access lines.
  - (2) The provisions of this section apply upon a bona fide request to each ILEC that serves fewer than one million access lines.
- (c) **Unbundling requirements.**
- (1) **Unbundling in accordance with current FCC requirements.** Each ILEC that is subject to this section must unbundle as specified in subparagraphs (A) and (B) of this paragraph. An ILEC with interstate tariffs in effect must unbundle its network or services under the same terms and conditions, except for price, as it unbundles its interstate services, unless ordered otherwise by the commission. The ILEC must also not impose a charge or rate element that is not included in its interstate tariffs for these unbundled rate elements. Nothing in this paragraph precludes the commission from requiring further unbundling of local exchange company services, including the services unbundled in accordance with this paragraph.
    - (A) The ILEC's network must be unbundled to the extent ordered by the FCC in compliance with its open network architecture requirements; and
    - (B) Signaling for tandem switching must be unbundled to the extent ordered by the FCC in compliance with CC Docket Number 91-141, Third Report and Order, In the Matter of Expanded Interconnection with Local Telephone Company Facilities, Transport Phase II.
  - (2) **Unbundling in accordance with future FCC requirements.** An ILEC must unbundle its network or services for intrastate services to the extent ordered, in the future, by the FCC for interstate services. An ILEC with interstate tariffs in effect must unbundle these services under the same terms and conditions, except for price, as it unbundles its interstate services, unless ordered otherwise by the commission. The ILEC must also not impose a charge or rate element that is not included in its interstate tariffs for unbundling. Nothing in this paragraph precludes the commission from requiring further unbundling of local exchange company services, including the services unbundled in accordance with this paragraph.
- (d) **Costing and pricing of services in compliance with this section.**
- (1) **Cost standard.** Services unbundled in compliance with this section must be subject to the following cost standard.
    - (A) The cost standard for unbundled services must be the long run incremental costs (LRIC) of providing the service.
    - (B) Any ILEC subject to §26.214 of this title (relating to Long Run Incremental Cost (LRIC) Methodology for Services provided by Certain Incumbent Local Exchange Companies (ILECs)) or §26.215 of this title (relating to Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility Services), as applicable, must file LRIC studies in accordance with that rule for unbundled components specified in subsection (c)(1) of this section.
    - (C) For any ILEC that is subject to §26.214 or §26.215 of this title, the cost standard for unbundled services required under subsection (c)(2) of this section must be the long run incremental costs as prescribed by §26.214 or §26.215 of this title, as applicable.

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- (D) The long run incremental cost standard does not apply if the ILEC proposes rates that are the same as the rates in effect for the carrier's interstate provision of the same or equivalent unbundled service or if the ILEC adopts rates of another ILEC in accordance with paragraph (2)(B) of this subsection.
- (2) **Pricing standard.** Services unbundled in compliance with this section must be subject to the following pricing standard.
  - (A) Any ILEC may propose rates, without cost justification, that are at parity with the rates in effect for the carrier's interstate provision of the same or equivalent unbundled service. The ILEC must amend its intrastate rates, terms and conditions to be consistent with subsequent revisions in its interstate tariffs providing for unbundling in accordance with the filing requirements established in subsection (f)(4) of this section.
  - (B) In addition to the provision in subparagraph (A) of this paragraph, ILECs that are not subject to §26.214 or §26.215 of this title may adopt the rates of another ILEC that are developed in accordance with the requirements of this section.
  - (C) If an ILEC proposes rates that are not at parity with the rates in effect for the carrier's interstate provision of the same or equivalent unbundled service or does not adopt the rates of another ILEC in accordance with subparagraph (B) of this paragraph, the following requirements apply to any service approved under this section:
    - (i) Unless waived or modified by the presiding officer, the service must be offered in every exchange served by the ILEC, except exchanges in which the ILEC's facilities do not have the technical capability to provide the service.
    - (ii) If the sum of the rates of the new unbundled components is equal to the price of the original bundled service and if the ratio of the rate of each unbundled component to its LRIC is the same for each unbundled component, there is a rebuttable presumption that the rate of an unbundled component is reasonable.
    - (iii) The proposed rates and terms of the service must not be unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive.
  - (D) Rates based upon the new LRIC cost studies required under paragraph (1)(B) of this subsection are subject to §26.214 or §26.215 of this title, as applicable, to the same extent as any other service offered by an ILEC subject to the applicable provision.
- (e) **Basket assignment.** An ILEC electing for incentive regulation under PURA Chapter 58 must, in its compliance tariff filed in accordance with subsection (f) of this section, include a proposal and rationale for designating the unbundled components as basic services or non-basic services.
- (f) **Filing requirements.**
  - (1) **Initial filing to implement subsection (c)(1) of this section in effect for ILECs serving one million or more access lines.** An ILEC serving one million or more access lines must file initial tariff amendments to implement the provisions of subsection (c)(1) of this section not later than 60 days from the effective date of this section. The proposed effective date of such filings must be not later than 30 days after the filing date, unless suspended. Tariff revisions filed in accordance with this paragraph must not be combined in a single application with any other tariff revision.
  - (2) **Filings to comply with subsection (c)(2) of this section for ILECs serving one million or more access lines.** An ILEC serving one million or more access lines must file tariff amendments to implement the provisions of subsection (c)(2) of this section, within 60 days of the effective date of its interstate tariff providing for unbundling. The proposed effective

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date of such filings must be not later than 30 days after the filing date, unless suspended. Tariff revisions filed in accordance with this paragraph must not be combined in a single application with any other tariff revision.

- (3) **Filings to implement subsections (c)(1) and (2) of this section for ILECs serving fewer than one million access lines.** If an ILEC serving fewer than one million access lines receives a bona fide request, the ILEC must unbundle its network or services in accordance with the bona fide request within 90 days from the date of receipt of the bona fide request or has the burden of demonstrating the reasons for not unbundling in accordance with the bona fide request.
  - (4) **Filings to comply with subsection (d)(2)(A) of this section.** An ILEC proposing rates in accordance with subsection (d)(2)(A) of this section must file tariff amendments to implement the revisions in its interstate tariffs providing for unbundling, within 30 days of the effective date of its interstate tariff providing for unbundling. The proposed effective date of such filings must be not later than 30 days after the filing date, unless suspended. Tariff revisions filed in accordance with this paragraph must not be combined in a single application with any other tariff revision.
- (g) **Requirements for notice and contents of application in compliance with this section.**
- (1) **Notice of Application.** The presiding officer may require notice to be provided to the public as required by Chapter 22, Subchapter D of this title (relating to Notice). The notice must include, at a minimum, a description of the service, the proposed rates and other terms of the service, the types of customers likely to be affected if the service is approved, the probable effect on ILEC's revenues if the service is approved, the proposed effective date for the service, and the following language: "Persons who wish to comment on this application should notify the commission by (specified date, ten days before the proposed effective date). Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Consumer Protection Division at (512) 936-7120 or toll free at (888) 782-8477. Hearing- and speech-impaired individuals may contact the commission through Relay Texas at (800) 735-2989."
  - (2) **Contents of application for an ILEC serving one million or more access lines that is required to comply with subsection (f)(1), (2), and (4) of this section.** An ILEC must request approval of an unbundled service by filing an application that complies with the requirements of this section. A copy of the application must be delivered to the Office of Public Utility Counsel. The application must contain the following information:
    - (A) a description of the proposed service and the rates, terms and conditions, under which the service is proposed to be offered and a demonstration that the proposed rates, terms and conditions comply with the requirements in subsections (c), (d), and (e) of this section, as applicable;
    - (B) a statement detailing the type of notice, if any, the ILEC has provided or intends to provide to the public regarding the application and a brief statement explaining why the ILEC's notice proposal is reasonable;
    - (C) a copy of the text of the notice, if any;
    - (D) a long run incremental cost study supporting the proposed rates, if the rates are not at parity with the carrier's interstate rates;
    - (E) detailed documentation showing that the proposed service is priced above the long run incremental cost of such service, including all workpapers and supporting documentation relating to computations or assumptions contained in the application, if the rates are not at parity with the carrier's interstate rates;
    - (F) projection of revenues, demand, and expenses demonstrating that in the second year after the service is first offered, the proposed rates will generate sufficient annual revenues to recover the annual long run incremental costs of providing the service, as

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- well as a contribution for joint or common costs, if the rates are not at parity with the carrier's interstate rates;
- (G) explanation that the proposed rates and terms of the service are not unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive;
  - (H) the information required by §§26.121 of this title (relating to Privacy Issues), 26.122 of this title (relating to Customer Proprietary Network Information, and 26.123 of this title (relating to Caller Identification Services); and
  - (I) any other information which the ILEC wants considered in connection with the commission's review of its application.
- (3) **Contents of application for an ILEC serving fewer than one million access lines that is required to comply with subsection (f)(3) and (4) of this section.** An ILEC must file with the commission an application complying with the requirements of this section. A copy of the application must be filed with the Office of Public Utility Counsel. The application must contain the following:
- (A) contents of the application required by paragraph (2)(A), (B), (C), (H), and (I) of this subsection;
  - (B) contents of the application required by paragraph (2)(D), (E), (F), and (G) of this subsection, if the rates are not at parity with the carrier's interstate rates or the rates of another ILEC;
  - (C) a description of the proposed service and the rates, terms, and conditions under which the service is proposed to be offered and an affidavit from the general manager or an officer of the ILEC approving the proposed service;
  - (D) a notarized affidavit from a representative of the ILEC affirming that the rates are just and reasonable and are not unreasonably preferential, prejudicial, or discriminatory; subsidized directly or indirectly by regulated monopoly services; or predatory, or anticompetitive; and
  - (E) projections of the amount of revenues that will be generated by the proposed service.
- (h) **Commission processing of application.**
- (1) **Administrative review.** An application considered under this section is eligible for administrative review unless the ILEC requests the application be docketed or the presiding officer, for good cause, determines at any point during the review that the application should be docketed.
    - (A) The operation of the proposed rate schedule may be suspended for 35 days after the effective date of the application. The effective date must be according to the requirements in subsection (f) of this section.
    - (B) The application will be reviewed for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant will be notified within ten working days of the filing date of the specific deficiency in its application, and the earliest possible effective date of the application will be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any deadlines will be 30 days from the day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date.
    - (C) While the application is under administrative review, commission staff and the staff of the Office of the Public Utility Counsel (OPUC) may submit requests for information to the ILEC. Answers to such requests for information must be filed with the commission and a copy must be provided to OPUC within ten days after receipt of the request by the ILEC.

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- (D) No later than 20 days after the filing date of the sufficient application, interested persons may provide to the commission staff written comments or recommendations concerning the application. Commission staff must and OPC may file with the presiding officer written comments or recommendations concerning the application.
  - (E) No later than 35 days after the effective date of the application, the presiding officer will issue an order approving, denying, or docketing the ILEC's application.
  - (2) **Approval or denial of application.** The application will be approved by the presiding officer if the proposed tariff meets the requirements in this section. If, based on the administrative review, the presiding officer determines, that one or more of the requirements not waived have not been met, the presiding officer will docket the application.
  - (3) **Standards for docketing.** The application may be docketed in accordance with §22.33(b) of this title (relating to Tariff Filings).
  - (4) **Review of the application after docketing.** If the application is docketed, the operation of the proposed rate schedule will be automatically suspended to a date 120 days after the applicant has filed its direct testimony and exhibits, or 155 days after the effective date, whichever is later. Affected persons may move to intervene in the docket, and the presiding officer may schedule a hearing on the merits. The application will be processed in accordance with the commission's rules applicable to docketed cases.
  - (5) **Interim rates.** For good cause, interim rates may be approved after docketing. If the service requires substantial initial investment by customers before they may receive the service, interim rates will be approved only if the ILEC shows, in addition to good cause, that it will notify each customer prior to purchasing the service that the customer's investment may be at risk due to the interim nature of the service.
- (i) **Commission processing of waivers.** Any request for modification or waiver of the requirements of this section must include a complete statement of the ILEC's arguments and factual support for that request. The presiding officer will rule on the request expeditiously.