The Public Utility Commission of Texas (commission) adopts new §26.433, relating to Roles and Responsibilities of 9-1-1 Service Providers, with changes to the proposed text as published in the December 17, 1999 *Texas Register* (24 TexReg 11206). The rule is necessary to assure the integrity of the state's emergency 9-1-1 system in the context of a competitive telecommunications market. The rule establishes specific reporting and notification requirements, mandates certain network interoperability, service quality, and database integrity standards, and establishes unbundling requirements for dominant certificated telecommunications utilities. This section is adopted under Project Number 19203.

This rulemaking was initiated by the commission under Project Number 19203, *9-1-1 Rulemaking*, in 1998 to ensure a competitively neutral playing field and the integrity of the Texas emergency 9-1-1 system in the context of a competitive telecommunications market. On December 11, 1998 the commission published in the *Texas Register* a series of questions concerning the appropriate scope of this rule. Subsequently, on June 3, 1999 the Commission on State Emergency Communications (CSEC) submitted to the commission a draft rule. The commission held a workshop on July 20, 1999 to provide interested parties an opportunity to comment on CSEC's draft rule and to further comment on the scope of this proceeding. The commission published the proposed rule with additional questions on December 17, 1999.

The preamble to the proposed rule as published in the *Texas Register* asked stakeholders to provide general comments on the proposed rule and to comment specifically on eight issues posed in the preamble. The commission received comments on the proposed new section from AT&T Communications of the Southwest (AT&T), the Commission on State Emergency Communications (CSEC) and the districts created pursuant to Texas Health and Safety Code Chapter 772, including Bexar Metro 9-1-1 Network, Brazos County Emergency Communication District, Calhoun County 9-1-1 Emergency Communication District, DENCO Area 9-1-1 District, 9-1-1 Network of East Texas, Emergency Communication District of Ector County, Galveston County Emergency Communication District, Greater Harris County 9-1-1 Emergency Network, Henderson County 9-1-1 Communication District, Howard County 9-1-1 Communication District, Kerr County Emergency 9-1-1 Network, Lubbock County Emergency Communication District, McLennan County Emergency Communication District, Montgomery County Emergency Communication District, Potter-Randall County Emergency Communications District, Tarrant County 9-1-1 District, and Texas Eastern 9-1-1 Network (collectively 9-1-1 Agencies), City of Dallas, City of Plano Public Service Agency, Houston Cellular Telephone Company (HCTC), GTE Southwest Incorporated (GTE), MCI Worldcom (MCIW), NEXTLINK Texas, Inc. (NEXTLINK), PrimeCo Personal Communications (PrimeCo), Sprint, Southwestern Bell Telephone Company (SWBT), SCC Communications Corporation (SCC), Time Warner Telecom (TWT), Teligent, Inc. (Teligent), Texas Telephone Association (TTA), Texas State Telephone Cooperative, Inc. (TSTCI), and XYPoint Corporation (XYPoint). Reply comments were received from AT&T, CSEC, GTE, HCTC, MCIW, a coalition consisting of Intermedia Communications, Inc., NEXTLINK Texas, Inc., Teligent, TWT, and Winstar Wireless, Inc., (the

CLEC Coalition), Office of Public Utility Counsel (OPUC), SCC, Sprint, SWBT, Southwestern Bell Wireless, Inc. (SWBW), TSTCI, VoiceStream, and Western Wireless Corporation (Western).

Preamble Issue Number 1:

The proposed rule includes specific requirements for network services providers and database service providers. While the rule includes definitions for "9-1-1 network services provider" and "9-1-1 database management services provider," the rule does not specify the elements of "9-1-1 network services" and "9-1-1 database services." Should this rule include definitions for "9-1-1 network services" and "9-1-1 database services?" If so, how should these terms be defined for purposes of this rule?

CSEC, GTE, Teligent, TWT, the CLEC Coalition, MCIW, Sprint and SCC commented that the rule should include definitions for "9-1-1 network services" and "9-1-1 database services." SWBT commented that the definitions are unnecessary, and would be problematic and counterproductive because they would only constrain the development of services in the competitive market. SWBT asserted that any definitions are better left to tariff proceedings.

MCIW added that the identification of network elements such as tandems and public service answering points (PSAPs) should be part of the definitions. MCIW agreed with the initial comments of the 9-1-1 Agencies that the terms "9-1-1 network service provider" and "9-1-1 database management services

provider" should only apply to carriers that actually implement and oversee the 9-1-1 system, such as SWBT, GTE, and SCC.

CSEC and SCC both proposed a specific definition to limit 9-1-1 network services to those purchased by a 9-1-1 administrative entity that routes 9-1-1 calls from a 9-1-1 tandem, or its equivalent, to a PSAP. CSEC further proposed a specific definition to limit 9-1-1 database services to those purchased by a 9-1-1 administrative entity that validates and processes subscriber record information of telecommunications providers for purposes of Selective Routing and Automatic Location Identification, as well as statistical performance measures. SCC proposed a definition that would limit database management services to the creation, storage, maintenance, processing, management exchange, and dissemination of information utilized in the provisioning of 9-1-1 services. Teligent suggested that the terms defined by the National Emergency Number Association (NENA) Technical Committee and Public Service Answering Points Operational Standards Committee should be the basis for these definitions. SCC further commented that the definitions should address the core activities involved in the separate functions of network services and database services. SCC also remarked that a distinction must be clearly drawn between the functions of those network and database services and service elements that electronically or electro-mechanically connect a 9-1-1 caller with a PSAP and those related to the information required to enable that connection to be accomplished. SCC suggested that the commission divide selective routing into its primary components, define the roles of network and database services, and that, in order to eliminate confusion, focus on the service elements instead of the providers. SCC stated that if a party stores 9-1-1 data, then that party is a 9-1-1 data services

provider with respect to that particular activity, and if the same party also controls the movement of 9-1-1 voice or data through a portion of the 9-1-1 network, then, with respect to that service or function, that party would also be a 9-1-1 network services provider. SCC also commented that SWBT's and GTE's position ignores the differences between network and database Selective Routing services, and reiterated that its initial comments proposed language that would recognize and define the primary components of Selective Routing. SWBT disagreed with SCC's position, but stated that GTE's position constitutes a balanced approach that would not force the network services provider to rely on a non-affiliated database provider for timely and reliable call completion. However, SWBT asserted the record has not been sufficiently developed to support such definitions. SWBT commented that, to the extent the addition of the definitions does not create substantive changes, then they are unnecessary; to the extent the addition of the definitions does create substantive changes, then they cannot be lawfully added without republishing the rule for further comment. GTE suggested that the definition of a 9-1-1 network services provider be modified to specify the call delivery point as the PSAP. GTE opposed definitions offered by SCC and those offered by the coalition of 9-1-1 Agencies as overly broad, and stated that any adopted definitions should be modified to state that the providers of such services should be Certificated Telecommunications Utilities (CTUs). GTE also opposed SCC's proposed definitions for selective routing functions as unnecessary and unduly restrictive.

Sprint commented that the rule should include definitions, and noted that the commission's definitions of "9-1-1 network services provider" and "9-1-1 database management services provider" are confusing and should be changed.

TSTCI, the CLEC Coalition, SCC, and TTA commented that a clear demarcation should be drawn between 9-1-1 network and database providers and all other telecommunications providers. TSTCI commented that the proposed definitions should be clarified with respect to an Incumbent Local Exchange Carrier (ILEC) providing dedicated trunks to a PSAP and updates to the 9-1-1 database. The CLEC Coalition urged the commission to include definitions in enough detail to ensure that all providers know precisely what provisions of the rule apply to them. SCC commented that the commission should properly identify the roles and responsibilities of the various entities delivering 9-1-1 calls to the correct PSAP by clearly defining the entities, and the core activities they perform. TTA commented that it was uncertain which entities are included in the proposed definitions of each service provider category.

The commission concurs with CSEC, GTE, Teligent, TWT, the CLEC Coalition, MCIW, Sprint and SCC and adopts CSEC's proposed definitions. The commission recognizes that parties need clarification on the specific services that comprise 9-1-1 database services and 9-1-1 network services. The commission concludes that there is sufficient record to develop definitions in this rule, and further concludes that the inclusion of definitions could facilitate the resolution of cases pending before the commission.

Preamble Issue Number 2:

Is the requirement to file network services plans and database services plans annually as proposed in §26.433(d) appropriate? Should these plans be filed more or less frequently?

SCC initially stated its support for annual filings, but later concurred with other parties that an initial filing, followed by filings when mandated by the commission or when fundamental changes in the 9-1-1 infrastructure occur, would be sufficient. The City of Dallas and CSEC stated their support for annual filings. AT&T, MCIW, Sprint, Teligent, TSTCI, GTE, and SWBT recommended that carriers file the required information initially, and thereafter update the information as necessary to keep it current. AT&T suggested a procedure similar to the procedure provided for under Substantive Rule §26.89, relating to Information Regarding Rates and Services of Nondominant Carriers. GTE, Teligent, and SCC suggested that only modifications to the plans be filed with the commission, within a reasonable period, such as between 30 and 60 days. TWT indicated that plans should be filed when material changes to network or database services are planned, but no less often than annually. Teligent and TWT further suggested that any annual report could reference the prior year plan if no changes occurred from year to year. SCC pointed out that any legislative or regulatory mandates affecting 9-1-1 service provisioning should serve as a trigger to update the plans within 120 days of the mandate. Finally, SCC posited that all submitted plans should be in alignment with National Emergency Numbering Association (NENA) 9-1-1 data and network standards.

The commission finds that annual filings are not necessary, and agrees with the recommendation that after an initial filing, an updated network services plan or database services plan need only be filed when

a change has occurred that affects a 9-1-1 administrative entity, a 9-1-1 database management services provider, or a 9-1-1 network services provider. The commission further concludes that any such updates need not occur more often than quarterly of each year, in order to eliminate unnecessary burden on the 9-1-1 providers. Regarding NENA standards, the commission agrees with SCC and encourages parties to submit plans in alignment with the appropriate NENA 9-1-1 data and network recommendations. Finally, the commission finds that AT&T's proposal to adopt a procedure similar to the procedure provided for under Substantive Rule §26.89 relating to Information Regarding Rates and Services of Nondominant Carriers extends beyond the scope of this rule. Therefore, the commission declines to adopt that provision in this rule.

Preamble Issue Number 3:

Section 26.433(g) of the proposed rule would prohibit certificated telecommunications utilities (CTUs) from seeking cost recovery from 9-1-1 administrative entities for certain 9-1-1-related services. The commission anticipates that this may be a controversial issue and seeks comments from interested parties on whether this portion of the proposed rule is appropriate and reasonable. Are there other costs that should be addressed in proposed §26.433(g)? If so, what are these costs and should they be considered a part of a CTU's cost of doing business or should they be subject to commission review and approval through the tariff process?

The commission addresses the cost recovery issues raised by Preamble Question Number 3 under the discussion related to subsection (g), below.

Preamble Issue Number 4:

What are the competitive impacts, if any, of allowing or disallowing cost recovery for the items in proposed §26.433(g)?

The commission addresses the cost recovery issues raised by Preamble Question Number 4 under the discussion related to subsection (g), below.

Preamble Issue Number 5:

Section 26.433(g)(2) in essence codifies existing law under Texas Health & Safety Code Ann. §§771.071, 772.114, 772.214, 772.314 and 772.403. Should subsection (g)(2) be deleted from the proposed rule?

AT&T, Sprint, GTE, TSTCI, and SWBT supported the deletion of this subsection. AT&T stated that the cited statutory sections govern the operations of service providers regardless of the existence of this subsection of the rule. SWBT submitted that it is better to reference existing law, as is done in the definition subsection, since re-codification or re-statement introduces the possibility of conflicts, either at

inception or over time, if the source law changes without a parallel change in the rule. Sprint, GTE and TSTCI commented that the language was redundant and unnecessary. CSEC and SCC supported the inclusion of the published language in order to prevent potential problems or controversies, such as penalties, which could constitute a hardship to new entrants. The City of Dallas commented that §26.433(g)(2) should remain in the proposed rule to reiterate that 9-1-1 service fees are determined by, and unique to, each 9-1-1 entity. Because the information would not detract from the rule, TTA stated no objection to the inclusion of the statutory references.

It is the commission's position that a simple reiteration of the Texas Health and Safety Code will not change the duty to be familiar with, and to comply with that code. The commission notes that re-statement of Texas Health and Safety Code in this rule introduces potential conflicts if the Texas Health and Safety Code is changed in the future. Due to these conclusions, the commission finds the references to the Texas Health and Safety Code in subsection (g)(2) to be unnecessary and deletes them from the rule accordingly.

MCIW stated that, with the exception of the establishment of fees, CSEC or emergency service districts are responsible for implementing these sections. The City of Plano pointed out that Texas Health and Safety Codes 771 or 772 do not govern 9-1-1 service fees imposed by Home Rule Cities; therefore, §26.433(g)(2) should not be deleted from the rule.

The commission notes that this section shall apply, in large part, to certificated telecommunications utilities. The commission concludes that references to Texas Health and Safety Code that apply to CSEC or emergency service districts are better referenced in CSEC's rules or its agency practices. Therefore, the commission deletes the references to the Texas Health and Safety Code.

Preamble Issue Number 6:

As proposed, those portions of the rule applicable to "telecommunications providers" would apply to Commercial Mobile Radio Service (CMRS) providers. (*See* Public Utility Regulatory Act (PURA) §51.002(10)(A)(iv) and §60.124). Is this appropriate? To what extent should the proposed rule apply to CMRS providers? What other types of voice grade wireless services, if any, should be subject to the proposed rule? Should fixed wireless providers be treated any differently under the proposed rule than other wireless providers?

CSEC commented that it is appropriate for certain portions of the published rule to apply to CMRS providers, and indicated that only subsection (e)(2)(A)-(C) would apply to all telecommunications providers. CSEC noted that these sections would simply require: (1) appropriate contact information be provided to the 9-1-1 Agencies; (2) that there be good faith efforts to enter into written service agreements to document the 9-1-1 service arrangements; and (3) that there be an appropriate 9-1-1 disaster recovery and restoration plan developed with input from the 9-1-1 Agencies, information that CSEC considers to be bare minimum standards that are consistent with the commission's specific

statutory charge in PURA §60.124 to require each telecommunications provider to maintain interoperable networks. CSEC commented that, although several wireless carriers or their vendors object, as a matter of law, to the few minimal requirements in the proposed rule that apply to wireless carriers, these "quality of service/consumer protection requirements" are within the "other terms and conditions" exception permitted by the applicable federal law. CSEC suggested that to the extent the commission finds these arguments compelling, the rule could be amended to apply to CMRS providers, "to the extent consistent with federal law or rules…."

Sprint, Western/VoiceStream, MCIW, XYPoint, GTE, AT&T, SWBW, and HCTC generally oppose any regulation of CMRS providers. Western/VoiceStream agreed with Sprint that the commission should not impose regulations over CMRS providers who are regulated by the Federal Communications Commission (FCC), which continues to address carriers' 9-1-1 service obligations to their wireless customers; consequently, CMRS providers are outside of the scope of the proposed rule.

AT&T, HCTC, and GTE indicated that the utilities code does not grant the commission authority over CMRS providers. GTE, HCTC, and SWBW specifically commented that, while currently complying with §26.433(e)(2) as a matter of course, CMRS providers are not subject to commission authority under Texas Utilities Code Annotated §51.003. GTE also commented that the other requirements of the proposed rule should not apply to CMRS providers in that they interconnect with 9-1-1 service providers, but do not actually deliver the 9-1-1 traffic to the PSAP. GTE noted that this same situation applies to pure resellers of telecommunications service.

GTE also commented that CMRS providers are currently negotiating with the commission on State Emergency Communications issues such as appropriate trunking configurations, and, as such, the proposed provision is premature.

AT&T commented that there is a distinction between the commission's authority to ensure that carriers properly interconnect with each other and the commission mandating CMRS providers, which are not regulated by the commission, to comply with broad rules and regulations issued by the commission, CSEC, and individual 9-1-1 entities. AT&T and PrimeCo also disputed that PURA §60.124, relating to interoperablity of networks, extends to CMRS providers. Consequently, AT&T suggested that the applicability of the rule be limited to "telecommunications utilities" from the Texas Utilities Code Annotated §51.002(11), or that the rule specifically exclude its applicability to CMRS providers.

SCC, the cities of Plano and Dallas, and CSEC commented that the rule should cover fixed wireless, since fixed wireless behaves in the same manner as a fixed wireline telephone. SCC commented that there continues to be debate regarding Federal Communication Commission (FCC) mandates for Wireless Phase I and Phase II. SCC also commented that wireless 9-1-1 brings complexity to 9-1-1 issues, because the basic architecture of 9-1-1 systems is designed for fixed landline service. Finally, SCC commented that it is unlikely that all aspects of wireless 9-1-1 service can be addressed with this rule; however, as Wireless Phase I is more widely deployed, it will almost certainly force a review of existing 9-1-1 interconnection rules, standards, and operational practices.

AT&T commented that, to the extent fixed wireless services are being provided by a CMRS provider, then the same objections to the commission's authority apply. AT&T noted that the FCC has established a rebuttable presumption that fixed wireless service provided under a CMRS provider's license would be deemed to fall under the definition of CMRS (and may be done as a fixed wireless local loop on a co-primary basis) and consequently regulated as a CMRS service.

Although AT&T commented that its fixed wireless customer provisioning is very similar to a wireline provider with transmission of automatic location identification (ALI) and automatic number identification (ANI) to the PSAP, it noted that this wireline-equivalent 9-1-1 service in conjunction with its fixed wireless service does not transform a wireless provider into a provider of wireline service under the commission's jurisdiction.

PrimeCo commented that its provisioning of E9-1-1 service is currently provided through XYPoint, a database management service provider that uses non-callpath-associated signaling technology to provide state-of-the-art E9-1-1 service to PrimeCo's subscribers. This service may be disrupted, PrimeCo asserted, if XYPoint is not designated by the 9-1-1 administrative entity under proposed subsection (b)(2). Moreover, PrimeCo expressed concern that XYPoint is not certificated; therefore, XYPoint would not be able to deliver crucial database management tasks for PrimeCo. PrimeCo suggested excluding wireless providers from the rule to eliminate possible unintended consequences.

The commission notes initially that the FCC currently regulates CMRS providers. The FCC has promulgated specific regulations regarding the obligations of CMRS providers to provide E9-1-1 service. The commission finds that the FCC's E9-1-1 wireless requirements under Wireless Phase I & II are designed to create the safety net necessary to ensure the integrity of the wireless network as it interacts with the PSAP. Although the deployment of Wireless Phase I may refocus the discussion and possibly cause a review of the interoperability of wireless and wireline systems and networks, as SCC commented, the commission finds that, at this time, the FCC has adequately placed safeguards for the integrity of the wireless networks through its E9-1-1 rulemakings; therefore, the commission finds it unnecessary at this time to address the issue.

Because of its wireline-like architecture, some comments have noted that fixed wireless carriers should be treated the same as wireline carriers for the purposes of this rule. As AT&T noted, the FCC acknowledged the wireline characteristics of fixed wireless; in its First Report and Order and Further Notice Of Rulemaking WT Docket 96-6, August 1, 1996, the FCC allowed CMRS service providers to offer fixed, mobile and hybrid services on their assigned spectrum on a co-primary basis with mobile services. The FCC went on to propose establishing a rebuttable presumption on a case-by-case basis that licensees offering other fixed services over CMRS spectrum should be regulated as CMRS providers. To the extent a fixed wireless carrier is presumed to be regulated as CMRS by the FCC, the commission, for the purposes of this rule, interprets PURA §51.003(5), which excludes CMRS providers from the requirements of PURA, to also exclude fixed wireless.

The commission finds that the facts regarding trunking issues have not been sufficiently developed in this rulemaking, and that it is more appropriate for trunking configurations, usage, etc. to be handled informally, as GTE suggested, through ongoing negotiations between CMRS providers and CSEC. Moreover, at this time, the commission finds that the FCC's E9-1-1 regulations for wireless providers sufficiently address CSEC's concerns regarding quality of service and consumer protection and precludes the application of PURA §60.124 to CMRS providers. The commission also agrees with XYPoint that the rule should not require wireless database management services providers to become certificated, to the extent they provide exclusively wireless services. In addition, the commission declines to limit the applicability of the rule to "telecommunications utilities," as such a limitation would exclude the possibility that, as the FCC acknowledges, fixed wireless could fall out of the CMRS category. Therefore, the commission revises subsection (a) of the rule to reflect that CMRS providers, including fixed wireless, are not subject to this rule to the extent that they are not a certificated telecommunication utility.

Preamble Issue Number 7:

The commission also seeks comment on what 9-1-1-related issues should be resolved in this rulemaking and what, if any, issues should be addressed through contested cases, arbitrations and/or tariff proceedings.

CSEC commented that its believes that as many threshold policy issues as possible should be resolved through this rulemaking, and not be left for resolution in contested cases, arbitration, or tariff proceedings. CSEC's stated reasoning was its assertion of the public interest issues associated with 9-1-1 emergency service provision and the expense of participation in numerous contested cases, arbitrations, and tariff proceedings. CSEC also commented that resolution of policies in the context of rulemaking narrowly focuses the other proceedings. CSEC further noted the specific sections of the rule resolving recovery of dedicated transport and file formatting costs and unbundling. As a necessary corollary, CSEC commented that a further functional separation of a CTUs provision of basic local telecommunications service from its 9-1-1 network or 9-1-1 database services is appropriate in a competitive environment.

CSEC's comments are addressed in the commission's response throughout the preamble and specifically in subsection (h).

SCC commented that this rulemaking proceeding should address those matters of policy regarding 9-1-1 services that affect the telecommunications industry and the 9-1-1 agencies. SCC commented that since this project will define the roles and responsibilities of 9-1-1 network services providers, 9-1-1 database management service providers, and local exchange service providers in the competitive 9-1-1 services marketplace, several pending dockets will benefit from the formulated policies. SCC specifically noted that policy decisions regarding ILEC and competitive local exchange carrier (CLEC) cost recovery, subscriber records to be loaded into the selective routing database, and the delineation

between network and database services should be made in a rulemaking proceeding in which the maximum number of interested parties are able to participate.

In addition, SCC commented that the rule should require that all 9-1-1 tariffs or service offerings be constructed to separate the elements of network service from the elements of database management services. SCC also suggested that the rule provide that any costs associated with local exchange service provisioning, such as development and submission of subscriber records to a 9-1-1 database administrator, be excluded from tariffed rates and charges billed to 9-1-1 agencies. Sprint took exception to SCC's assertion that "any costs associated with local exchange service provisioning, such as development and submission of subscriber records to a 9-1-1 database administrator be excluded from tariffed rates and charges billed to 9-1-1 agencies." According to Sprint, SCC provided no rationale for this statement and attempted to take future database cost potential for wireless Phase II out of the argument. Sprint asserted that database costs for CMRS providers are liable to be substantial and should be allowed recovery from 9-1-1 administrative entities.

SCC's and Sprint's comments are addressed in the commission's response to Preamble Issue Number 1 and subsections (e), (f), (g)(1) and (h).

AT&T referred to its prior comments regarding CMRS providers in Preamble Issue Number 6.

AT&T's comments are addressed in the commission's response to Preamble Issue Number 6.

SWBT commented that, with the major exception of the preclusion of cost recovery in subsection (g), the proposed rule generally addresses matters appropriate for rulemaking. SWBT commented that substantive rules should generally define threshold matters of service quality and roles and responsibilities of participants in the service. SWBT also commented that pricing and cost recovery for the services provided must be left to appropriate tariff proceedings, operation of the competitive market, or both. Finally, SWBT commented that disputes about the application of those rules to particular services by particular carriers should be left to complaint dockets.

SWBT's comments are addressed in the commission's response to Preamble Issue Number 1 and subsection (g)(1).

CSEC proposed new subsection (i), relating to separation of local service functions from 9-1-1 network services and 9-1-1 database services functions, and proposed language to functionally separate those services. SWBT opposed this proposal on the grounds that it is unsupported in the record, and goes beyond the purview of the rule.

The commission concurs with SWBT that the intent or benefit of incorporating this language into the rule is unclear, and not well supported in the record of this proceeding. Therefore, the commission declines to accept the proposed language.

Preamble Issue Number 8:

Finally, the commission requests interested parties to describe "best practice" examples of regulatory policies, and their rationale, that have been proposed or implemented successfully in other states regarding the interoperability of 9-1-1 networks in a competitive environment. The commission is only interested in receiving examples that are specifically related and directly applicable to ensuring the integrity and reliability of 9-1-1 service in Texas, rather than broad citations to other state's 9-1-1 efforts.

Sprint commented that the state of Oregon has been successful regarding a statewide 9-1-1 network and interoperability of the 9-1-1 network in a competitive environment. SCC commented that formal, codified regulatory standards for the reliability and integrity of 9-1-1 systems are not prevalent; however, SCC noted that Washington, Oregon, and Arizona have established database accuracy benchmarks of 97%, 98%, and 95%, respectively. SCC also noted that Illinois has codified standards for 9-1-1 systems that address service, engineering, operations, and facilities. GTE also recommended a best practice example approved by the Illinois Commerce Commission that required 9-1-1 entities to assemble and submit 9-1-1 service plans.

CSEC commented that the addition of NENA recommenced standards as a best practice should be fundamental for interoperability standards, and further suggested that the rule mandate such standards. CSEC cited a pre-adoption rulemaking by the Illinois Public Utility Commission (PUC) as an example

and noted their desire to enforce standards without the necessity of additional PUC complaints or petitions for rulemaking. CSEC also commented, without elaboration, that Colorado requires the 'best practice' of posting a Failure or Outage Report Log.

SWBT commented that the request for descriptions of best practices may not be applicable in Texas because SWBT is unaware of another jurisdiction in which a third party database provider provides database services except as the agent of the ILEC. Accordingly, SWBT stated that the proposed rule is casting the mold, in terms of defining the respective roles of the 9-1-1 database management services provider and the 9-1-1 network services provider.

The commission finds that most of the "best practice" examples submitted are not applicable; in most other states, the control and oversight over the 9-1-1 emergency telecommunications service lies with the state public utility commission, unlike Texas, in which a separate state agency, the Commission on State Emergency Communications, is delegated this responsibility.

The commission notes that the Illinois and Wisconsin processes of requiring service plans to be submitted to the state utility regulatory body essentially parallels the process outlined in the revised rule. The rule requires the submission of service plans and allows CSEC, which has the authority to review such plans, to fulfill its obligations.

The commission acknowledges that the NENA standards may be useful as a guideline, and notes that some of the practices cited are used in this rule, but declines to incorporate the standards into the rule. The commission finds that NENA standards are recommendations that have not been endorsed by any standards setting body, nor have industry consensus.

Regarding the Colorado requirement of posting a Failure or Outage Report Log, the commission addresses this issue in the proposed rule under subsection (e)(1)(D) and subsection (e)(2)(C).

The commission is appreciative of the parties' contribution of best practices from other jurisdictions and notes that the purpose of examples from other states is to help provide the most reliable emergency response system for the state of Texas. The commission reiterates that certain practices by other states may not be adopted *per se* because of the commission's agency structure and delegated authority.

Specific Subsections of the Rule

Subsection (b) Definitions

As discussed above under Preamble Issue Number 1, Sprint commented that the commission's definitions of "9-1-1 network services provider" and "9-1-1 database management services provider" are confusing and should be changed and that it was unclear whether the definition of "9-1-1 network services provider" applied to commercial mobile radio service (CMRS) providers who allow their

customers to dial 9-1-1 for emergency services. Sprint opposed the inclusion of CMRS providers and any requirement under this rule that CMRS providers become certificated. Sprint suggested the rule should be changed to allow CMRS providers to participate in the 9-1-1 system without being directly regulated by the commission. Western/VoiceStream agreed with Sprint that there is a need for clarification on the certification issue.

AT&T, as discussed above in Question Number 1, suggested that the applicability of the rule be limited to "telecommunications utilities," or that the rule exclude its applicability to CMRS providers. AT&T claimed that the commission's jurisdiction does not extend to CMRS providers, but that CMRS providers are regulated by the FCC. Regarding 9-1-1 and CMRS carriers, AT&T cited the FCC's Wireless Phase I and II orders, which address CMRS 9-1-1 service obligations. AT&T pointed out that CMRS and 9-1-1 reliability issues continue to be addressed by the FCC. AT&T further acknowledged that the requirements under proposed subsection (e)(2)(A)-(C) are logical, but AT&T maintained that these requirements are beyond the commission's jurisdiction. AT&T also claimed that the commission's authority under PURA §60.124, relating to interoperability of networks, does not extend to directing CMRS providers as to the type and scope of their 9-1-1 service contracts or with whom they shall contract for 9-1-1 service. In order to accomplish this second alternative, AT&T suggested defining telecommunications provider in subsection (b)(19), and adding language in subsection (e)(2) that states the term "telecommunications provider" shall not include a CMRS provider.

GTE commented that CMRS providers are not subject to commission authority under Texas Utilities Code Annotated §51.003. GTE also commented that the other requirements of the proposed rule should not apply to CMRS providers in that they interconnect with 9-1-1 service providers but do not actually deliver the 9-1-1 traffic to the PSAP, and noted that this same situation applies to pure resellers of telecommunications service. In keeping with this interpretation, GTE suggested that proposed subsection (b)(3), 9-1-1 network services provider, be modified to clarify that the call delivery is to the public safety answering point.

CSEC recommended expanding the definition of CSEC to add "with the responsibilities and authority as specified in Texas Health and Safety Code, Chapter 771."

The commission clarifies the definition of "9-1-1 network services provider" to specify that only CTUs may be designated by the 9-1-1 administrative entity. As stated in Preamble Issue Number 1, the commission adopts CSEC's proposed definitions of "9-1-1 database services" and "9-1-1 network services." The commission declines to adopt GTE's suggestion because limiting the definition to certain providers ignores the evolving nature of the network configuration. The commission, however, further clarifies the meaning of "9-1-1 network services provider" by replacing "call delivery service" with "network services." Regarding CMRS, the commission refers to the findings and conclusions in the discussion under Preamble Issue Number 6, above. The commission also finds it necessary to add the definition of commercial mobile radio service to clarify the meaning of added language under subsection (a). Finally, the commission accepts CSEC's proposed amendment to its definition.

Subsection (c) 9-1-1 Service Provider Certification Requirements

Sprint, GTE, and Western Wireless commented that the language of subsection (c) regarding certification of 9-1-1 network services providers can easily be misinterpreted to mean that only telecommunications "utilities," and not telecommunications "providers," are allowed to provide 9-1-1 services in the state of Texas. Sprint noted that CMRS providers are not certificated telecommunications utilities (CTUs) but they are "telecommunications providers" under PURA; however, there are many CMRS providers who allow their customers to dial 9-1-1 for emergency services. Sprint expressed concern that CMRS 9-1-1 access may be considered a "portion" of 9-1-1 service under subsection (c), and a CMRS provider would consequently be in violation of the rule. GTE added that this requirement should not apply to pure resellers.

The commission's intent was not to preclude CMRS carriers, or any other carrier, from providing their customers access to 9-1-1 services, but rather to require entities that provide 9-1-1 network services to 9-1-1 entities to be certificated. The commission notes that subsection (a) now excludes CMRS providers. In addition, the commission has modified the definition of 9-1-1 network services provider in subsection (b) to capture only CTUs. Thus, the commission has deleted the portion of subsection (c) regarding the certification requirement for 9-1-1 network services providers as duplicative.

CSEC commented that subsection (c) could be read to require certification for a long distance carrier or TEX-AN to provide circuits between a PSAP and the ALI database. CSEC commented that it currently uses TEX-AN for the circuit connection between the PSAP and the ALI database in some areas. According to CSEC, this circuit connection does not have the same interoperability issues as other 9-1-1 network issues because this circuit connection is strictly between the PSAP and the ALI database, and certification should not necessarily be a requirement in that limited situation. CSEC suggested adding exception language to address the issue; however, GTE replied that the circuits addressed in CSEC's exception suggestion continue to interface with the public switched network and the rationale behind §26.433(c) is still applicable to these selected network components.

The commission finds that the replacement of "any portion of 9-1-1 service" with "a necessary element of 9-1-1 service" addresses both CSEC's and GTE's concerns, because the commission has not determined these circuits to be a necessary element of 9-1-1 service to date. PURA §51.002(1)(E) sets forth that access to 9-1-1 service is a component of basic local telecommunications services. PURA requires that before basic telecommunications service can be provided by an entity, that entity must obtain a certificate of operating authority. In the order approving SCC's Service Provider Certificate of Operating Authority (SPCOA) application (Docket Number 21544) the commission granted SCC's application for the provision of data-only service related to 9-1-1 selective routing. The commission concludes that it is in the public interest to codify this policy by requiring 9-1-1 database management services providers that provision a data-only service related to 9-1-1 selective routing, or any other service the commission might find in the future to be a necessary element of basic local

service, to obtain a certificate. The commission clarifies subsection (c) accordingly. Due to the change to subsection (b)(3), the commission concludes that the second sentence of subsection (c) is no longer necessary and deletes it accordingly.

XYPoint commented that, generally, the commission lacks the authority to regulate a wireless 9-1-1 database service provider. XYPoint and PrimeCo also stated their opinion on the limits of commission authority, and commented that requiring 9-1-1 service providers to be certificated does not adequately differentiate wireless and wireline providers. XYPoint and PrimeCo stated that the commission lacks the authority to regulate a wireless 9-1-1 database service provider, and that requiring an entity such as XYPoint be certificated as a "telecommunications utility" in order to provide 9-1-1 service would be excessively burdensome. PrimeCo added that such a requirement could disrupt 9-1-1 service. XYPoint suggested that the proposed rules and certification requirements contemplated should be modified either to clearly address only wireline 9-1-1, or treat wireless emergency services separately.

The commission finds that the revisions to subsection (a), excluding CMRS providers that are not CTUs and database management service providers offering service exclusively to CMRS providers that are not CTUs, address the concerns of PrimeCo and XYPoint.

Subsection (d)(1) Network Services Plan and Subsection (d)(2) Database Services Plan

The commission received many comments and suggestions to changes to subsection (d)(1) and (d)(2) of proposed rule, which require providers of network and database services to submit service plans. CSEC and the CLEC Coalition expressed their support for this requirement, and pointed out that, in the competitive market, multiple wireline and wireless providers must: (1) connect to the appropriate 9-1-1 selective routing tandem in the manner designated by the applicable 9-1-1 Agency, and (2) interface with the 9-1-1 database services provider in the manner designated by the applicable 9-1-1 Agency.

SWBT, TTA, TSTCI, AT&T, and GTE expressed reservations about whether the filing of such plans is appropriate or necessary. SWBT commented that the rule would require service providers subject to commission jurisdiction to facilitate development of the CSEC plan, when CSEC has no authority to require the information itself. TTA and TSTCI stated that the requirements of the plans would impose significant administrative burdens on the entities filing the plans.

The commission finds that in the emerging competitive market for 9-1-1 services, it is necessary for providers to submit network and database services plans to provide the citizens of Texas with a reliable and efficient 9-1-1 system. These plans shall be filed initially by September 1, 2000, and providers will be required to file an updated plan for any changes made to the plan that affect a 9-1-1 administrative entity, a 9-1-1 database management services provider, or a 9-1-1-network services provider, but no more often than on a quarterly basis. The commission has revised subsection (d) to reflect these conclusions.

MCIW stated that the requirement is reasonable if applied to the carriers that actually implement and oversee the 9-1-1 system (SWBT, GTE, and SCC). According to MCIW, applying the requirement to carriers without direct control over the 9-1-1 system would be of little value and would be a significant burden to those carriers.

The commission agrees with MCIW, and concludes that subsection (d)(1) and (2) apply to the carriers that actually implement and oversee the 9-1-1 system (currently SWBT, GTE, and SCC).

GTE proposed an arrangement similar to Illinois and Wisconsin, whereby 9-1-1 entities are required to submit plans, with all necessary input from CTUs as to their respective networks and plans. TSTCI and SWBT indicated that GTE's suggestion has merit and warrants further review. GTE and SWBT asserted that the 9-1-1 entity is in the best position to provide overall service arrangements, with input from the CTUs, for all facilities-based carriers in its jurisdiction. According to TTA, some of the information required by the plans is already available to CSEC through the 9-1-1 entities. GTE encouraged the commission to require network and database services plans from the 9-1-1 entities with input from the CTUs. CSEC disagreed with these assertions, and indicated that the 9-1-1 Network Services Provider and the 9-1-1 Database Management Services Provider have information that only they can reasonably distribute to all the involved parties.

The commission notes that the arrangement proposed by GTE would not be applicable to Texas because the commission and CSEC are separate state agencies. In Illinois and Wisconsin there is one

commission that governs the 9-1-1 system, as well as all other telecommunication services. Because the commission has authority over CTUs and because CTUs are in the best position to provide the information required by subsection (d), the commission finds that the requirement that the CTUs file the plan with the commission is appropriate.

Sprint and GTE stated that each provider should only file one plan for the entire state, instead of filing for each PSAP individually. GTE indicated that the commission should send the documents to the individual agencies, and recommended that the entity-specific information requirements at subsection (d)(1)(B) and (d)(2)(B) be struck from the statewide plan requirements. Additionally, Sprint questioned why the PSAP needs rate center information, and indicated that county and city boundaries are defined by governmental entities, and not the 9-1-1 service providers.

The commission believes that in order to adequately provide an efficient and reliable 9-1-1 system, individual PSAPs need access to this information. The commission further concludes that it is not unnecessarily burdensome to require CTUs to file service plans at the PSAP level of service.

GTE said it should be mandatory that such plans be filed under seal and only the first submission should be scheduled and subsequent submissions should be filed only as modifications occur. TSTCI indicated the importance of allowing the small ILECs to file their plans, schematic drawings, and maps under seal. The CLEC Coalition pointed out that the rule specifies that these plans may be filed under seal, thus potentially thwarting a CLEC's ability to make coordinated changes in its own systems and procedures.

The CLEC Coalition recommended that subsections (d)(1) and (d)(2) be amended to allow for the contents to be available to telecommunications providers under a standard protective order. The CLEC Coalition further recommended that any portions filed on a highly sensitive, confidential basis contain a justification as to why affected carriers should not have access to the information, even under a protective order.

The commission acknowledges that confidential information may be contained in the plans, and therefore the commission finds that revising the rule to allow for protective orders adequately protects confidential filings.

CSEC further suggested that subsection (d)(1), regarding the network services plan, should be amended consistent with Substantive Rule §26.272, relating to Interconnection, which already requires contingency plans, and also makes subsection (d)(1) consistent with subsection (d)(2)(D) and (E), which applies to the database service plan.

The commission finds that by making subsection (d)(1) applicable only to 9-1-1 network services providers, rather than all CTUs, addresses CSEC's concern about any inconsistency with Substantive Rule §26.272. The commission additionally finds that the requirements of subsection (d)(2)(D) and (E) are already required of 9-1-1 network services providers in subsection (d)(1)(C) and of telecommunications providers in subsection (e)(2)(B).

Subsection (d)(3)(B) Other notification requirements

GTE commented that the requirement that a CTU provide a list of the CTU's wholesale customers by area code is unclear as to its purpose and the exact requirement. A CTU's wholesale customer is the competitive local exchange carrier (CLEC) or interexchange carrier (IXC) with which the CTU interconnects. GTE suggested that it should not be the responsibility of the underlying CTU to provide a list of CLECs and IXCs by "area code." Rather, it should be the responsibility of the CTU that provides retail service to communicate with each applicable 9-1-1 entity in its jurisdiction. Additionally, GTE stated that it does not currently possess the functionality necessary to correlate the list of interconnecting carriers to area codes and to each 9-1-1 entity's particular jurisdiction.

TTA commented that it is unclear if the language intends that certified resellers provide the 9-1-1 administrative entity with a list of their customers by area code quarterly, or if the CTU providing service to a reseller is being asked to provide a list of the resellers and the telephone numbers being resold by that reseller. TTA believes that the certified resellers should be responsible for providing whatever data and information is necessary to the 9-1-1 administrative entities themselves.

The commission agrees that the intent of subsection (d)(3)(B) is imprecise. Subsection (d)(3) and (e) specify that it is the responsibility of a CTU reseller or a CTU provisioning service through unbundling network elements to provide information about its operations to a 9-1-1 administrative entity, and is not

the responsibility of the CTU wholesaler. For these reasons, the commission deletes subsection (d)(3)(B).

Subsection (e) Network Interoperability and Service Quality Requirements

GTE, Sprint, and TTA stated that subsection (e)(1)(E) appears to make the CTU responsible for verifying PSAP compliance with equipment rules. GTE notes that CTUs are not in the position to know or police whether a PSAP has upgraded its equipment to comply with the 10-digit capable 9-1-1 customer premises equipment (CPE) requirement.

SWBT stated that subsection (e)(1)(E) is fundamentally flawed because initially it would require a CTU under certain circumstances to require each affected PSAP to upgrade to a minimum 10-digit capable 9-1-1 CPE. SWBT noted that the rule then provides that the CTU may petition the commission to discontinue service in the absence of the upgrade and the entity could petition the commission to waive the requirement. The proposed rule would place the CTU in an enforcement role over its customers, for something that has no bearing on the business of the CTU. SWBT further commented that the approach seems to be a misdirection because if either CSEC or the commission has jurisdiction to require upgrades of CPE by the PSAPs, then they should exercise that jurisdiction directly rather than indirectly by trying to make the CTU an enforcement arm of either agency. SWBT asserted that both alternatives may be bad public policy, since the situation would either give the CTU the authority to generate an equipment purchase from itself, or force it to generate an equipment purchase from a

competitor. SWBT suggested that the provision should either be deleted or perhaps changed to relieve the CTU of the enforcement responsibility. As an alternative, SWBT suggests that the rule could leave enforcement to petition by public agency or affected person, with the remedy being that the serving CTU is instructed to discontinue service unless, and until, the party creating problems for the 9-1-1 system were to upgrade its CPE so that it no longer had an adverse effect on the 9-1-1 system.

CSEC proposed language that would require CTUs to provide 10-digit selective routing if they provide 9-1-1 network services with selective routing tandems serving five or more area codes. CSEC commented that adding this language in this rule is important because the commission cannot do numbering plan area (NPA) relief in a manner that results in five or more NPAs in a 9-1-1 selective routing tandem unless the 9-1-1 network services provider provides 9-1-1 selective routing on a 10-digit basis, as opposed to an 8-digit basis.

The commission agrees with GTE and SWBT that this section would force CTUs to verify compliance with equipment rules and act as an enforcement arm against PSAPs. Although the commission desires that PSAPs conform to the guidelines established in the rule, it realizes that the CTUs should not be held responsible for ensuring the PSAPs conform to the rule's requirements. The commission concludes that this requirement should be deleted from subsection (e)(1), relating to CTU responsibilities; however, the commission finds that PSAP upgrades could contribute to the integrity of the 9-1-1 system. The commission would therefore prefer that a PSAP take responsibility for a 10-digit capable upgrades. The commission finds that CSEC's proposed language is unnecessary, because it reflects current

practice in the state and does not need to be codified. The commission concludes that the deletion of subsection (e)(1)(E) addresses SWBT's and CSEC's concerns.

AT&T stated that subsection (e)(2)(B) relating to Uniform Service Agreements requires CTUs to negotiate in good faith with each affected 9-1-1 administrative entity to enter into written 9-1-1 service agreements. AT&T did not oppose this requirement, as it merely reflects existing practice in the industry; however, AT&T noted that, because there are a myriad of different 9-1-1 entities, many of which seek to require providers to execute different forms of agreement, the process of negotiating agreements with each of the entities can entail a much greater expenditure of time and resources than is efficient or necessary. AT&T recommended that this rule streamline and make more predictable the process of negotiating and executing these agreements through the use of standard form 9-1-1 agreements promulgated by CSEC governing both resellers and facilities based providers that are currently used by some 9-1-1 entities. SWBT commented that, although the commission may not be able to formally require either CTUs or 9-1-1 entities to utilize any particular form of agreement, it may be appropriate for the commission to include in its rule a condition that the CTUs' obligation to negotiate in good faith is limited to the requirement that the CTU will enter into the standard CSEC form if offered by the 9-1-1 entity and the rule does not require a CTU to accept a unique form offered by a selected 9-1-1 entity.

In addition, SWBT commented that, if the commission is to embark on codifying the requirement that an agreement is to be executed, then definitive time frames for negotiating and executing the agreement

should be in the rule, including a defined, streamlined process to help accomplish that goal. At a minimum, SWBT suggested that the rule require that the good faith obligation to negotiate include a written request from the CLEC to the 9-1-1 entity with a short turnaround time, where the 9-1-1 entity provides its form of agreement to the requesting CLEC and where the entity then approves the agreement once signed and submitted by the CLEC. AT&T suggested that three business days would be an appropriate time frame for each period.

The commission finds that §26.272(f)(1), relating to interconnection, currently provides the necessary direction for parties to negotiate and execute agreements. The commission notes that PSAPs are not subject to commission jurisdiction, so any commission authority over the agreements is unilateral, and therefore of limited utility. The commission continues to encourage parties to negotiate difficult issues, but, in the event that parties are unable to negotiate, the parties may resolve issues through a contested case proceeding. The commission therefore concludes that the provisions of subsection (e)(2)(B) are duplicative of the interconnection rules and deletes subsection (e)(2)(B).

CSEC commented, as stated in response to Preamble Issue Number 6 above, the commission should add a provision that the number, trunk configuration, and usage of trunks must be designed based on industry standard traffic studies subject to review and consent by the affected 9-1-1 administrative entity, and that a telecommunications provider may petition the commission for waiver of this requirement for good cause.

AT&T and GTE objected to CSEC's proposed additional requirement, citing concerns that number and trunk configurations should not be subject to approval by individual 9-1-1 entities or the commission. AT&T claimed that it is more appropriate to address these issues through industry standards in coordination with the 9-1-1 network provider that controls the 9-1-1 tandem; however, GTE claimed that it is unclear what constitute "industry standards." AT&T also objected to the statement that this requirement can be waived for good cause because it is unclear what requirement may be waived, and would inappropriately interject the commission into determining technical details. SWBT also opposed CSEC's proposed language, and stated that, unless CTUs are allowed to recover the costs of providing those trunks from the 9-1-1 entities, and 9-1-1 entities are paying for the services as customers, the 9-1-1 entities should not control the quantity of trunks. GTE stated that CSEC's proposed requirements are the responsibility of the dominant certificated telecommunications utility (DCTUs) and the commission.

While the commission appreciates CSEC's perspective, the commission believes that the facts have not been sufficiently developed in this rulemaking. Instead, the commission agrees with GTE that it is more appropriate for trunking configurations, usage, etc. to be handled informally, through ongoing negotiations between telecommunication providers and CSEC. Additionally, the commission notes that PSAPs can intervene in complaints regarding DCTUs 9-1-1 tariffs and express their concerns regarding the appropriateness of DCTUs trunking services and other terms and conditions.

CSEC proposed new language to allow 9-1-1 agencies to request testing and inspection of new switches for 9-1-1 service functionality, and to be paid for by CTUs. CSEC asserted that the addition of this language will assist in maintaining the integrity of the 9-1-1 system in the competitive telecommunications environment.

The commission concludes that it is appropriate to expect CTUs to test the proper functionality of equipment, but the commission further concludes that the incentive already exists for CTUs to maintain network integrity, and that the rule need not provide standards already in practice.

Subsection (f) Database Integrity

With respect to subsection (f)(1)(A), AT&T noted that, in certain areas where a specific rate center is served by multiple ILECs, such as Plano, which is served by SWBT and GTE, the serving ILEC that is the holder of ALI database information entered into the master street address guide (MSAG) for individual customers can be difficult to identify. AT&T further noted that, if a facilities-based CLEC tries to update the MSAG for a new customer by sending the information to the ILEC serving the area, the 9-1-1 call could be made but the master street address guide would be out of date. AT&T strongly supported requiring all parties (PSAPs, CLECs and ILECs) to cooperate in good faith to ensure that the MSAG is kept up to date on a going-forward basis.

CSEC concurred that better cooperation and information exchange is needed between the involved parties (e.g., through the 9-1-1 network and database service plans), and that additional monitoring and enforcement of these rules is necessary to protect the public interest at this time.

The commission concludes that the requirements of subsection (f)(1)(A), relating to MSAG provisioning, and subsections (d)(1) and (d)(2), relating to the filing of network and database plans, already address AT&T's concern. It is the commission's understanding that the MSAG updates are not the responsibility of the carriers; rather that information is generated from the 9-1-1 entities. The MSAG, as provided to the CTUs by the 9-1-1 entities, is a reference tool enabling proper routing of 9-1-1 calls. The commission therefore concludes that out-of-date MSAGs is not a result of multiple 9-1-1 service providers; MSAG updates are the responsibility of the 9-1-1 entities. The commission nonetheless acknowledges AT&T's and CSEC's concerns, and concludes that an environment with multiple 9-1-1 services providers underscores the need for these providers to file accurate network and database services plans. These plans will enable CTUs to consult the plans and provide accurate 9-1-1 access to their customers.

CSEC recommended that the commission modify the first sentence in subsection (f)(1)(A), and delete the reference to "or other appropriate governmental source, such as post offices and local governments," because it is overly broad and could create confusion and errors, and proposed to replace these phrases with "for areas where the 9-1-1 service includes selective routing and/or automatic location identification." SWBT disputed CSEC's claim that this phrase would cause

confusion, and recommended that the sentence be left intact. CSEC also recommended that the first sentence in subsection (f)(1)(A) be modified to read: "(A) Utilize a copy of the 9-1-1 administrative entity's MSAG for areas where the 9-1-1 service includes Selective Routing and/or Automatic Location Identification to confirm that valid addresses are available for 9-1-1 calls." GTE further commented that this provision should be clarified to specify that the MSAG *provided by the* 9-*1-1 administrative entity* should be made available to the CTU at no charge and in a mechanized format compatible with the CTU's systems.

Because (f)(1)(A) specifies sources of information, the commission concludes that deletion of "or other appropriate governmental source, such as post offices and local governments" would result in confusion and possible errors. The commission does concur with CSEC's comment regarding Selective Routing or Automatic Location Identification, and revises subsection (f)(1)(A). The commission clarifies that, where selective routing and automatic location identification devices are used, a CTU shall use a copy of the 9-1-1 administrative entity's MSAG, or to assign appropriate emergency service number (ESN) for 9-1-1 calls, based on validated address information.

CSEC suggested deleting the words "reasonable and" in subsection (f)(1)(B), and simply state that a CTU must take the "necessary steps," in order to strengthen the provision. SWBT disputed CSEC's suggestion, and stated that the record in this proceeding is insufficient to impose an absolute obligation, regardless of cost and feasibility.

The commission understands CSEC's concern about the submission of non-dialtone generating numbers, but concludes that the current language adequately clarifies the responsibilities of CTUs to prevent this problem.

CSEC suggested that the "72 hours" reference in subsection (f)(1)(C) is too long under normal circumstances, and could be too short in other situations, such as when a new subdivision has not yet been included in the MSAG. CSEC recommended that the language be modified to require that corrections to inaccurate subscriber information be submitted to the 9-1-1 database management services provider within 24 hours of notification of the error file from the 9-1-1 database management services provider, and provide for an exception to the 24 hour requirement where the information necessary to correct the error is outside the control of the CTU. SWBT pointed out that, in discussions related to the rule, the parties had difficulty defining non-dial-tone-generating numbers. SWBT averred that the combination of "reasonable and necessary" capture the appropriate standard. SWBT objected to CSEC's proposal, and stated that the shortened proposal would require that all changes be performed within 24 hours, regardless of holidays, weekends, complications, or logistics. GTE proposed language to allow the 9-1-1 administrative entity the same one-business-day-reply period, if CSEC's proposal is adopted.

AT&T agreed that 72 hours is a reasonable time period in most cases, but pointed out that 72 hours may be inappropriate if, for example, the CTU is required to obtain corrected information from the customer, property owner or other party.

SWBT noted that legal periods of such short duration usually exclude non-work days, such as weekends and holidays. SWBT, GTE and TSTCI suggested that the 72 hour time period not include weekends or holidays. GTE noted that the 9-1-1 agencies' proposal to limit the time period to 24 hours is consistent with current GTE practice, but additional time should be permitted in the event of extraordinary circumstances. GTE suggested changing the standard to "three business days." SWBT raised a concern with the ability to comply with the shortened timeframe. Whatever the time period adopted by the commission, GTE recommended a similar time constraint on the 9-1-1 entity, and proposed language to that effect.

The commission takes into consideration the comments of CSEC, AT&T, SWBT, and GTE concerning the 72-hour period, but declines to revise the language. The commission concludes that, while 24 hours may be consistent with current practices, additional time may be necessary in the event of extraordinary circumstances. Based upon the facts before the commission, there is no compelling reason to either shorten or lengthen the 72-hour period. While the commission agrees that a similar time-frame is appropriate for 9-1-1 entities to make the corrections specified in subsection (f)(1)(C), the commission does not have authority over 9-1-1 entities.

Subsection (g)(1) Cost Recovery

Several parties commented on the jurisdiction of the commission with respect to cost recovery. AT&T and MCIW commented that the proposal restricting cost recovery is inconsistent with jurisdictional grants of authority to this commission, and should be removed from the rule. According to AT&T, the jurisdiction of the commission to regulate non-dominant carriers is severely circumscribed. OPUC disputed AT&T's claim, and averred that PURA §60.122 grants the commission the authority to "determine rates and terms for interconnection for a holder of a certificate of convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority."

The commission disagrees with AT&T and MCIW. The proposed rule language does not restrict carriers' ability to recover their 9-1-1 costs but rather disallows them to recover the specific 9-1-1 costs described in the rule, from the 9-1-1 administrative entities. While the commission recognizes the authority granted in PURA §60.122, the commission finds that this particular section of the statute pertains to interconnection between CTUs and DCTUs, and does not apply to the cost recovery issue addressed in subsection (g).

GTE maintained that the 9-1-1 agencies have provided no statutory basis for a disallowance of cost recovery. If disputes arise regarding the appropriateness of select cost components of the 9-1-1 network, according to GTE, concerned parties have recourse through the commission's established complaint process. Sprint and SWBT commented that it is flawed policy for the commission to mandate services, but at the same time prohibit cost recovery for those services. TTA agreed, and stated that even though it appears that potentially increased costs to the 9-1-1 entities is an unintended

result, TTA cannot support a rulemaking provision that would prohibit any CTU from recovering costs, whether through approved tariffs or through legitimate contractual arrangements, for providing services, even to 9-1-1 entities.

TWT stated that it currently absorbs the costs of preparing and transferring its records and that it is willing to absorb the costs of transport from its end offices to the 9-1-1 selective routing tandem switch, but only if the ILECs are also required to absorb these costs. SWBT stated that, in a competitive market, providers may seek to distinguish themselves through pricing and, implicitly or explicitly, choose which costs will be recovered from customers or absorbed. SWBT further stated that the cost recovery provision would put the regulator in the paradoxical role of skewing the operation of the competitive market by requiring the CTU to price that particular aspect of the service below its relevant cost. SWBT maintained that the appropriate approach would be to let the CTU price the service to recover related costs and then let the competitive market operate.

The commission has considered all of the parties comments and believes from a public policy standpoint, it is appropriate to restrict carriers recovery from the 9-1-1 administrative agencies of file formatting costs, while not restricting the recovery of dedicated transport costs. The commission has determined that the costs associated with 9-1-1 database record file formatting are part of the cost of providing telecommunications service in Texas.

OPUC commented on the relationship between cost recovery and Chapter 58 electing companies. OPUC stated that GTE and SWBT have both elected into incentive regulation and consistent with PURA §58.021(b)(1), agreed to limit, until September 1, 2005, any increase in rates the company charges for basic network services. OPUC further stated that, since PURA §58.051(a)(8) lists 9-1-1 service as a basic network service, GTE and SWBT have agreed to limit any increase for 9-1-1 service until September 1, 2005.

The commission finds that OPUC's discussion does not eliminate the issue of cost recovery for 9-1-1 services, since "access to 9-1-1 service provided by a local authority" as set forth in PURA §58.051(a)(8) is not defined, and a rate cap is currently in place for both GTE and SWBT. Historically, 9-1-1 costs, specifically, dedicated trunking and file formatting, have been recovered from the 9-1-1 entities, as explained below.

A number of parties commented on which services are part of either basic local service or 9-1-1 services, because, they assert this demarcation has implications for cost recovery. CSEC asserted that PURA §51.002(1)(E) provides for access to 9-1-1 service provided by a local authority as part of basic local telecommunications service, which must apply to the dedicated trunking and file formatting required to provide that access. CSEC commented that, unlike 9-1-1 network services, the dedicated transport facilities and file formatting of customer records are not subject to competitive purchase by the 9-1-1 Agencies. CSEC further commented that the simplest approach is to draw the demarcation point for the 9-1-1 Agencies' cost reimbursement responsibility at the 9-1-1 tandem and at the 9-1-1

database, and consider dedicated 9-1-1 transport from an end office to the 9-1-1 tandem network and file formatting costs as part of a CTU's responsibility to provide basic local telecommunications service.

SWBT disputed CSEC's assertion, and commented that PURA §51.002(1)(E) merely defines "access to 9-1-1 service" as part of basic local telecommunications service. According to SWBT, a CTU could arguably provide that basic requirement over the standard Public Switched Telephone Network. SWBT maintained that the 9-1-1 Agencies would object to that alternative, because it would sacrifice some of the distinguishing characteristics of the emergency response system with dedicated facilities and location information. Sprint stated that 9-1-1 services were not set up as telecommunications services, but rather, the purpose was to institute emergency response services, which should not fall under the cost of doing business.

The commission concurs with CSEC that file formatting is not subject to competitive purchase by the 9-1-1 Agencies, and adopts CSEC's language. The commission believes that the costs associated with 9-1-1 database record file formatting are part of the cost of providing telecommunications service in Texas and should not be charged to a 9-1-1 administrative agency by a CTU. Therefore, the commission retains, with modification, subsection (g)(1)(A) in the rule, but revises it to read that "a CTU may not charge a 9-1-1 administrative entity for the following costs or activities through tariffed or non-tariffed charges: the preparation and transfer of files from the CTU's service order system to be used in the creation of 9-1-1 call routing data and 9-1-1 ALI data." The commission further notes that, although

the rule does not require standardization of file formatting between 9-1-1 databases, the commission strongly encourages parties to work together to accomplish this goal.

The commission distinguishes the costs for file formatting from the costs associated with dedicated transport. The commission believes that the latter are appropriate costs for CTUs to recover from the 9-1-1 administrative agencies. Therefore, the commission deletes subsection (g)(1)(B), regarding the prohibition of cost recovery for dedicated transport. Although the commission believes that CTUs should be able to recover these costs, the commission is concerned with the growing costs associated with the 9-1-1 system. These increased costs, including increased costs for dedicated transport, may constrain the PSAPs from providing adequate services to the public. Therefore, the commission directs carriers seeking to charge 9-1-1 service providers for network services to only charge the actual costs for dedicated transport of 9-1-1 calls at rates no higher than those determined in other commission wholesale rate proceedings.

TSTCI stated that the small ILECs are currently able to recover a $39 trunk charge from the 9-1-1 entities, which is below cost. TSTCI averred that many of the small ILECs are purchasing these trunks from SWBT for the same rate and that this rule could disrupt existing contractual arrangements with SWBT. TSTCI commented that the current local access line rates of the small ILECs do not reflect the costs of the 9-1-1 dedicated circuits or the cost of updating the 9-1-1 database. In fact, according to TSTCI, most of the small ILECs' local rates were established prior to the advent of 9-1-1 service. TSTCI asserted that the commission recognized that the costs of the dedicated circuits and other

components of providing 9-1-1 service are distinct from the cost of providing local exchange service, and the commission approved tariffs to recover the ILECs' cost of providing 9-1-1 service.

The commission agrees that the costs of 9-1-1 dedicated circuits are distinct from the cost of providing local exchange service. The commission believes that TSTCI members may modify their tariffs, to the extent allowed by PURA, in order that all costs are recovered.

SCC commented that, although providing local exchange subscriber records and transport from the local exchange end offices to the selective routing tandems or PSAPs are clearly elements of local exchange service provisioning, the costs associated with providing these elements were not incorporated into the base rate for local exchange service, but were included in the tariffs for provisioning 9-1-1 network and database elements. SCC noted that, in a competitive marketplace, 9-1-1 and local exchange services are separate functions, and should be treated accordingly. According to SCC, establishing a clear distinction between these functions will help the commission and 9-1-1 administrative entities monitor whether ILEC 9-1-1 network services providers grant CLECs and 9-1-1 database management services providers equitable access to routing data and subscriber records.

The commission agrees that dedicated trunking and file formatting were included in rates for 9-1-1 tariffs, and that a clear distinction between 9-1-1 service and basic local exchange service would benefit all parties.

SCC commented that costs associated with development and submission of subscriber records to a 9-1-1 database administrator, a service that SCC maintains is part of local exchange service provisioning, should not be billed to 9-1-1 agencies. Sprint disputed SCC's demarcation of 9-1-1 service and local service, and cautioned the commission against prohibiting cost recovery for all service provider database charges. According to Sprint, all local exchange company (LEC) data management systems, internal programs that collect, edit, screen and assure that the records going into the data management system are correct, delivery of records, maintaining databases in routers, and maintaining resources that respond to data errors, would be precluded from cost recovery if the commission adopted SCC's suggestion.

The commission acknowledges that CTUs may incur costs associated with file formatting, but reiterates its conclusion that the costs associated with 9-1-1 database record file formatting are part of the cost of providing telecommunications service in Texas and should not be charged to a 9-1-1 administrative agency by a CTU.

A number of parties commented on the appropriate purpose of 9-1-1 fees. AT&T commented that, while the 9-1-1 service provided is certainly of great public import, that fact does not eliminate the underlying costs of service. AT&T, TSTCI, SWBT, and MCIW stated that the 9-1-1 fees have historically covered the costs of 9-1-1 entities, including the rates imposed on the 9-1-1 entities for the telecommunications services provided to those entities. AT&T maintained that those costs should be recovered from the 9-1-1 entities that cause the cost.

CSEC commented that, at a minimum, 9-1-1 fees should be allocated for PSAPs' 9-1-1 customer premises equipment (CPE), 9-1-1 tandem network services provided by the 9-1-1 network services provider, and 9-1-1 database management services provided by the 9-1-1 database management services provider. According to CSEC, the 9-1-1 fees should not cover the costs of dedicated 9-1-1 transport from an end-office to the 9-1-1 tandem, or file formatting. CSEC further commented that the amount of 9-1-1 fees collected by CLECs may be lower than the dedicated trunking and file formatting costs recovered from 9-1-1 Agencies. CSEC suggested that, only after a CLEC has a large enough customer base, should the commission consider the issue of compensation for carrier-specific costs, but did not comment on what the minimum threshold customer base should be.

According to SWBT and Sprint, the general direction in telecommunications has been to eliminate implicit subsidies rather than to create new ones. GTE commented that disallowing cost recovery violates the Federal Telecommunications Act of 1996 by adding an additional burden to a current implicit support mechanism. Sprint opined that the 9-1-1 surcharge provides explicit subsidies for 9-1-1 emergency service.

The commission agrees with the comments of AT&T, TSTCI, SWBT, MCIW, Sprint, and GTE concerning the purpose of the 9-1-1 fee. The commission also recognizes that the 9-1-1 entities are currently using the 9-1-1 fees to pay for telecommunication services including dedicated trunking facilities from the central office to the 9-1-1 tandem and file formatting. The commission finds no reason

to discontinue the practice of utilizing 9-1-1 fees for cost recovery purposes, but the commission is sympathetic to CSEC's concern that the evolving competitive market is causing increased costs to 9-1-1 entities. The commission concludes that it has resolved this issue, in part, by prohibiting a CTU from charging a 9-1-1 administrative agency for costs associated with the 9-1-1 database record file formatting. The commission distinguishes the costs for file formatting from the costs associated with dedicated transport. The commission believes that the latter are appropriate costs for CTUs to recover from the 9-1-1 administrative agencies. Therefore, the commission deletes subsection (g)(1)(B), regarding the prohibition of cost recovery for dedicated transport.

AT&T, the CLEC Coalition, GTE, MCIW, NEXTLINK, SCC, SWBT, Sprint, TSTCI, Teligent, and TWT all generally commented that anti-competitive effects would result from the proposed rule language, and offered variations of the extent of the effects on incumbents and CLECs. CSEC refuted the arguments of these parties, and asserted that the rule's language is the simplest approach to cost recovery issues. In support of its argument, CSEC quoted the FCC's Second Memorandum Opinion and Order in CC Docket Number 94-102, in which the FCC stated that carriers without rate regulation, i.e., wireless carriers, can easily increase their rates to recover any additional 9-1-1 costs. The CLEC Coalition commented that SWBT and GTE have been recovering all their costs, including presumably their own data preparation costs, in their roles as the 9-1-1 network/database service providers through bundled tariffs covering those services. The CLEC Coalition contends that CLECs do not recover for data preparation costs and ILECs should not recover those costs, either. TWT asserted that on its face, this section provides special cost recovery treatment to ILECs and

discriminates against competitive local exchange carriers (CLECs) even if they have existing price lists or tariffs on file with the commission. According to TWT, CLECs' tariffs are not applicable regarding cost recovery, because they are not approved by the commission. NEXTLINK and Teligent stated that, while they are willing to absorb the costs of providing 9-1-1 service, as contemplated by §26.433(g), they object to the discriminatory impact of allowing ILECs – through their "approved" tariffs – to recover costs when CLECs cannot.

The commission finds that CSEC's approach to cost recovery does not address the anti-competitive issues raised by other parties, and agrees with TWT, NEXTLINK and Teligent that the current language regarding ILECs' tariffs raises discriminatory concerns for CLECs. The commission determines that deleting the current language regarding ILECs' tariffs addresses TWT, NEXTLINK and Teligent concerns.

SWBT stated that the commission should not use decisions by any competitor or desires by customers to impose operational constraints on a CTU that would have the effect of denying cost recovery for special functions it was compelled to perform.

AT&T and SCC commented that the provisions of the rule which permit incumbents and other existing providers to continue to recover their 9-1-1 costs under existing tariffs, but prohibit new providers from recovering the same costs are inconsistent with legal requirements and competitive policies, and should be eliminated. AT&T asserted that previous efforts by the commission to enact rules that distinguish

between similarly situated carriers on an analogous basis have been unsuccessful. AT&T stated that such discrimination favors incumbent providers and discourages new competitors, in contravention to clear and overriding federal and state public policy, and should be eliminated, particularly, since ILECs have historically had tariffs in place, and are reimbursed for provisioning their transport facilities from end offices to the tandems.

SCC and MCIW concurred that the current cost recovery mechanism, which the rule language purports to remedy, is unfair and anti-competitive. SCC and MCIW stated that the mechanism for cost recovery should be uniform for all providers. SCC specifically commented that the costs of providing subscriber records and the costs associated with transport to the selective router should be recoverable costs for the local exchange service provider. SCC suggested that, if it is too cumbersome for each local exchange service provider to file 9-1-1 tariffs to recover these costs, then all providers should either recover their costs through their base rates or absorb the costs as a cost of doing business. MCIW commented that CLECs have the legal right to recover reasonable costs for installation of 9-1-1 transport facilities.

The commission agrees with MCIW and SCC that the mechanism for cost recovery should be uniform for all providers. The commission finds that it is in the interest of all Texans that an incentive exist for 9-1-1 network services providers and 9-1-1 database management services providers to upgrade services and functions. The commission concludes that this incentive is best achieved through a uniform cost recovery mechanism.

MCIW commented that ILECs are better able to absorb 9-1-1 costs as "the cost of doing business" based on their receipt of large amounts of universal service funding (USF) and access charges; however, CLECs, do not have this safety net. GTE disagreed, and indicated that MCIW provided no support for its statement. GTE responded that the Texas USF funding mechanism simply makes explicit the support embedded in rates. According to GTE, the mechanism is revenue neutral, but provides no help in absorbing 9-1-1 costs.

SCC and the CLEC Coalition urged the commission to adopt a rule, or a cost recovery model that would provide parity for local exchange service providers. CSEC stated the competitive impacts of "disallowing" recovery would be to place the ILECs and the CLECs on an equal footing for the treatment of the functions of providing basic local telecommunications service. CSEC further stated the competitive challenge of "allowing" recovery includes how the commission would treat each of the companies in a deregulated environment. GTE and TTA asserted that allowing for full cost recovery of all legitimately included costs from the beneficiary of the service is the only way to ensure competitive neutrality.

TSTCI and GTE stated that a CLEC can more easily adjust its rates to recover its cost of doing business than a regulated ILEC, which would have to get commission approval to do so.

SCC commented that prohibiting recovery from 9-1-1 administrative entities of costs associated with 9-1-1 call transport and formatting and transmission of subscriber data may place unfair cost burdens on small ILECs and new entrants into the local exchange market. GTE commented that the disallowance of cost recovery would most likely disadvantage rural providers, where costs are materially higher, relative to their more urban counterparts. GTE asserted that the proposed disallowance for cost recovery provides a massive disincentive for new facilities-based carriers to enter into high cost areas, and for existing carriers to upgrade or enhance existing 9-1-1 service. GTE stated that the "equal" application of an illegal disallowance of explicit recovery to all carriers does not impact each carrier equally and does not achieve competitive neutrality. TWT further asserted that the proposed rule also precludes recovery of costs for any telecommunications provider that has not yet become certificated in Texas, thereby creating a barrier to entry vis-a-vis the ILECs. Sprint commented that if an ILEC with a 9-1-1 tariff can recover its costs, and a CLEC or CMRS provider who competes with the ILEC cannot, then the CLEC and CMRS provider have to increase their customer's rates to cover costs and are, therefore, less competitive with the ILEC's prices. Sprint states the proposed rule is contrary to the intent of the federal Telecommunications Act of 1996 (FTA) in that it specifically disadvantages new entrants.

The commission notes that, through their tariffs, ILECs currently recover their costs of providing 9-1-1 service, while many CLECs appear to absorb those costs. The commission agrees with MCIW and SCC that the current cost recovery scenario is distorted, and concludes that there are two mechanisms to address this distortion: 1) disallow providers from recovering costs associated with dedicated

trunking from the central office to the 9-1-1 tandem, as well as costs associated with file formatting from the 9-1-1 entities; or 2) allow all of the afore-mentioned entities to recover their costs from the 9-1-1 entities. The commission believes that the costs associated with 9-1-1 database record file formatting are part of the cost of providing telecommunications service in Texas and should not be charged to a 9-1-1 administrative agency by a CTU

The commission further concludes that allowing all providers to recover the costs of trunking from the central office to the 9-1-1 tandem addresses the concerns raised by the parties. Cost recovery for trunking erases the barrier to entry issue and allows 9-1-1 entities to control the quality of the network. For all of these reasons, the commission deletes subsection (g)(1)(B).

CSEC commented that it has no control over the development of the network, or the costs incurred by carriers to provide 9-1-1 services. GTE disagreed with the 9-1-1 agencies' proposal to disallow all recovery for costs due to their lack of control over the CTU's network. GTE maintained that the CTUs and the commission have a vested interest in configuring the local telecommunications network in the most efficient manner possible.

The commission empathizes with the 9-1-1 entities on the issue of cost recovery, and concludes that there is not a simple solution to this issue. However, the commission agrees with GTE that the CTUs, as well as the commission, are in a better position to address network efficiency. The commission concludes that disputes between 9-1-1 entities and CTUs regarding the appropriateness of rate

elements, not including rate elements associated with 9-1-1 database file formatting, should be addressed in contested proceedings and not by rule.

The cities of Dallas and Plano, and CSEC commented that, if costs for providing 9-1-1 related services is decided not to be part of a CTU's cost of doing business, cost recovery for trunking must not exceed the number of trunks necessary to provide P.01 grade of service. They further cautioned that CTUs must not be allowed to recover duplicate costs from multiple 9-1-1 entities in cases where trunking is shared among multiple entities within a rate center. CSEC argued that an important policy issue centers on the treatment of redundant 9-1-1 trunking that CLECs or ILECs put in place, but have not been requested by, or budgeted by, 9-1-1 entities. CSEC also argued that the commission needs to determine whether mileage-sensitive trunking charges are appropriate.

The commission agrees that the number of trunks for 9-1-1 service might be a disputed issue with respect to cost recovery, and concludes that this issue should be decided on a case-by-case basis in contested proceedings. The commission concludes that it is in the public interest to address any disputes over so called "double recovery" of 9-1-1 costs from multiple 9-1-1 entities on a case-by-case basis through contested proceedings. The commission notes that the published rule does not address mileage-sensitive trunking charges, and there is insufficient comment in the record to resolve this issue in this rulemaking. The commission understands and supports the need for a statewide average trunking charge, and recommends that the relevant parties change their 9-1-1 tariffs accordingly.

GTE stated that, if the commission determines that cost recovery may not take place from the 9-1-1 entities, then the rule should allow costs to be recovered in full from the universal service fund as allowed by PURA §56.025(b). OPUC responded that it found no support in PURA §56.025(b) for GTE's assertion regarding Texas Universal Service Fund (TUSF). According to OPUC, 9-1-1 service is not a high cost issue and the commission has no authority under the USF provisions to expand the TUSF for 9-1-1 services.

The commission agrees with OPUC, and reiterates its conclusion that costs associated with 9-1-1 database record file formatting are part of the cost of providing telecommunications service in Texas and should not be charged to a 9-1-1 administrative agency.

Subsection (h) Unbundling

CSEC suggested adding language to ensure that the purpose of unbundling, which is to avoid double and unnecessary charges to the 9-1-1 Agencies, is accomplished, and proposed language to that effect. GTE disagreed with CSEC and contends the suggested provision by the 9-1-1 agencies is unnecessary in that the commission already has jurisdiction to ensure that the 9-1-1 network charges are appropriate.

CSEC stated its concerns about cost recovery for CLECs, especially considering SWBT bundled 9-1-1 rates purchased by CLECs. Specifically, CSEC questioned whether the 9-1-1 Agencies would actually pay the CLECs more than they pay SWBT for the same services.

The commission adopts several changes to subsection (h). The commission changes CTU to DCTU, in order to clarify which entities this subsection will affect. The commission does not approve tariffs filed by CTUs. The commission also changes "elements/services" to "services," since tariffs offer services, as opposed to interconnection agreements, which offer unbundled elements. The commission also changes the language in several instances to conform to the revised definitions of 9-1-1 network services provider and 9-1-1 database management services provider.

The commission agrees with CSEC's comments that one of the purposes of this section is to ensure that the 9-1-1 Agencies would not incur unnecessary charges. In addition, this section would allow the 9-1-1 Agencies to pick and choose providers and services. However, the commission also accepts GTE's comments that the commission already possesses the jurisdiction to ensure that the goals of this section are met. The commission notes that other aspects, not specifically mentioned in this section, such as the technical feasibility of the unbundling of services, is within the commission's jurisdiction. Therefore, the commission declines to accept CSEC's proposal.

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

This section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2000) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, §54.001 which requires certification before providing local exchange, basic local telecommunications service, or switched access service; §58.051 which requires PURA Chapter 58 electing companies to offer access for all residential and business end users to 9-1-1 service provided by a local authority and access to dual party relay service; §60.001 which requires the commission to ensure that the rates and rules of an incumbent local exchange company (ILEC) are not unreasonably preferential, prejudicial, or discriminatory and are equitably and consistently applied; §60.021 which requires that at a minimum, an ILEC shall unbundle its network to the extent ordered by the Federal Communications Commission; §60.022 which states that the commission may unbundle local exchange company services in addition to the unbundling required by §60.021 after considering the public interest and competitive merits of further unbundling; §60.023 which states that the commission may assign an unbundled component to the appropriate category of services under Chapter 58 according to the purposes and intents of the categories; §60.122 which grants the commission exclusive jurisdiction to determine rates and terms for interconnection for a holder of a certificate of convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority; §60.124

which requires each telecommunications provider to maintain interoperable networks; §64.051 which requires the commission to adopt rules relating to certification, registration, and reporting requirements of a certificated telecommunications utility, all telecommunications utilities that are not dominant carriers, and pay telephone providers; §64.052 which establishes the scope of the rules under §64.051; and §64.053 which states the commission may require a telecommunications service provider to submit reports to the commission concerning any matter over which it has authority under PURA Chapter 64.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 15.021, 54.001, 58.051, 58.151, 58.265, 60.001, 60.021, 60.022, 60.023, 60.121, 60.122, 60.124, 64.051, 64.052, and 64.053.

§26.433. Roles and Responsibilities of 9-1-1 Service Providers.

(a) **Purpose**. The provisions of this section are intended to assure the integrity of the state's emergency 9-1-1 system in the context of a competitive telecommunications market. In particular this section establishes specific reporting and notification requirements and mandates certain network interoperability, service quality standards and database integrity standards. The requirements in this section are in addition to the applicable interconnection requirements required by §26.272 of this title (relating to Interconnection). This section is not applicable to commercial mobile radio service (CMRS) providers that are not certificated telecommunications utilities (CTUs), or database management service providers offering service exclusively to CMRS providers that are not CTUs in the state of Texas.

(b) **Definitions**. The following words and terms, used in this section shall have the following meanings, unless the context clearly indicates otherwise:

(1) **9-1-1 administrative entity** — A regional planning commission as defined in Texas Health & Safety Code Annotated §771.001(10) and an emergency communication district as defined in the Texas Health & Safety Code Annotated §771.001(3).

(2) **9-1-1 database services** — Services purchased by the 9-1-1 administrative entity(ies) that accepts, processes, and validates subscriber record information of telecommunications providers for purposes of Selective Routing and Automatic Location Identification, and that may also provide statistical performance measures.

(3) **9-1-1 network services** — Services purchased by the 9-1-1 administrative entity(ies) that routes 9-1-1 calls from a 9-1-1 tandem or its equivalent to a public safety answering point(s).

(4) **9-1-1 database management services provider** — The entity designated by a 9-1-1 administrative entity to provide 9-1-1 database management services that support the provision of 9-1-1 services.

(5) **9-1-1 network services provider** — The CTU designated by the 9-1-1 administrative entity to provide 9-1-1 network services.

(6) **Automatic location identification (ALI)** — The automatic display at the public safety answering point (PSAP) of the caller's telephone number, the address/location of the telephone and supplementary emergency services information.

(7) **Alternate routing** — The capability of routing 9-1-1 calls to a designated alternate location if all 9-1-1 trunks to a primary PSAP are busy or out of service.

(8) **Automatic number identification (ANI)** — The telephone number associated with the access line from which a call originates.

(9) **Commercial Mobile Radio Service (CMRS)** — A mobile interconnected service provided for profit and available to the public.

(10) **Commission on State Emergency Communications (CSEC)** — The state commission formerly known as the Advisory Commission on State Emergency Communications, with the responsibilities and authority as specified in Texas Health and Safety Code, Chapter 771.

(11) **Default routing** — The capability to route a 9-1-1 call to a designated PSAP when the incoming 9-1-1 call cannot be selectively routed due to an ANI failure or other cause.

(12) **Emergency service number (ESN)** — A three to five digit number representing a unique combination of emergency service agencies designated to serve a specific range of addresses within a particular geographic area. The ESN facilitates selective routing and selective transfer, if required, to the appropriate PSAP and the dispatching of the proper service agency(ies).

(13) **Emergency service zone (ESZ)** — A geographic area that has common law, fire, and emergency medical services that respond to 9-1-1 calls.

(14) **Master street address guide (MSAG)** — A database maintained by each 9-1-1 administrative entity of street names and house number ranges within their associated communities defining ESNs and their associated ESNs to enable proper routing of 9-1-1 calls.

(15) **NXX** — A three-digit code, also commonly referred to as exchange or prefix, in which "N" is any digit 2 through 9 and "X" is any digit 0 through 9.

(16) **Numbering plan area (NPA)** — Also commonly referred to as an area code. An NPA is the first three digit code in the ten digit numbering format that applies throughout areas served by the North American Numbering Plan number for a particular calling area.

(17) **P.01 grade of service** — A standard of service quality intended to measure the probability (P), expressed as a decimal fraction, of a telephone call being blocked. P.01 is the grade of service reflecting the probability that one call out of 100 during the average busy hour will be blocked.

(18) **Public safety answering point (PSAP)** — A continuously operated communications facility established or authorized by local governmental authorities that answers 9-1-1 calls originating within a given service area, as further defined in Texas Health and Safety Code Chapters 771 and 772.

(19) **Selective routing (SR)** — The routing of a 9-1-1 call to the proper PSAP based upon the location of the caller. Selective routing is controlled by the ESN which is derived from the customer location.

(20) **Selective routing tandem switch** — Switch located in a telephone central office that is equipped to accept, process, and route 9-1-1 calls to a specific location.

(21) **Service order system** — System used by a telecommunications provider that, among other functions, tracks customer service requests and billing data.

(22) **Telecommunications provider** — As defined in PURA §51.002(10).

(23) **Wholesale service** — As defined in §26.5 of this title (relating to Definitions).

(c) **9-1-1 service provider certification requirements.** A 9-1-1 database management services provider must be a certificated telecommunications utility in order to provide a necessary element of 9-1-1 service in the state of Texas.

(d) **Requirement to prepare plan and reporting and notification requirements.**

(1) **Network Services Plan.** By September 1, 2000, a 9-1-1 network services provider shall prepare and file with the commission a network services plan. The plan shall be updated upon a change affecting a 9-1-1 administrative entity, a 9-1-1 database management services provider, or a 9-1-1 network services provider, but not more often than quarterly of each year. Material submitted to the commission pursuant to this section believed to contain proprietary or confidential information shall be identified as such, and the commission may enter an appropriate protective order. The network services plan shall include:

(A) a description of the network services and infrastructure for equipment and software being used predominantly for the purpose of providing 9-1-1 services, including but not limited to, alternate routing, default routing, central office identification, and selective routing, ESN, and transfer information;

(B) a schematic drawing and maps illustrating current 9-1-1 network service arrangements specific to each 9-1-1 administrative entity's jurisdiction for each applicable rate center, city, and county. The maps shall show the overlay of rate center, county, and city boundaries; and

(C) a schedule of planned network upgrades and modifications that includes an explanation of the 9-1-1 customer premise equipment implications, if any, related to upgrades and modifications.

(2) **Database Services Plan.** By September 1, 2000, a 9-1-1 database management services provider shall prepare and file with the commission a database services plan. The plan shall be updated upon a change affecting a 9-1-1 administrative entity, a 9-1-1 database management services provider, or a 9-1-1 network services provider, but not more often than quarterly of each year. Material submitted to the commission pursuant to this section believed to contain proprietary or confidential information shall be identified as such, and the commission may enter an appropriate protective order. The database services plan shall include:

(A) a narrative description of the current database services provided, including but not limited to a description of current 9-1-1 database management service arrangements and each NPA/NXX by selective router served by the database management services provider;

(B) a schematic drawing and maps of current 9-1-1 database service arrangements specific to the applicable agency's jurisdiction for each applicable rate center, city, and county. The maps shall show the overlay of rate center, county, and city boundaries;

(C) a current schedule of planned database management upgrades and modifications, including software upgrades;

(D) an explanation of the 9-1-1 customer premises equipment implications, if any, related to any upgrades and modifications referenced in subparagraph (C) of this paragraph; and

(E) a description of all database contingency plans for 9-1-1 emergency service.

(3) **Other notification requirements.** A CTU shall notify all affected 9-1-1 administrative entities at least 30 days prior to activating or using a new NXX in a rate center or upon the commencement of providing local telephone service in any rate center.

(e) **Network interoperability and service quality requirements.** In order to ensure network interoperability and a consistent level of service quality the following standards shall apply.

(1) A CTU operating in the state of Texas shall:

(A) Participate, as technically appropriate and necessary, in 9-1-1 network and 9-1-1 database modifications; including, but not limited to, those related to area code relief planning, 9-1-1 tandem reconfiguration, and changes to the 9-1-1 network services or database management services provider.

(B) Notify and coordinate changes to the 9-1-1 network and database with, as necessary and appropriate, its wholesale customers, all affected 9-1-1 administrative entities, and CSEC.

(C) Provide a P.01 grade of service on the trunk groups required from the end office(s) to the designated selective routing tandem and from the selective routing tandem to the PSAP.

(D) Apprise all affected 9-1-1 administrative entities of any failure to meet the P.01 grade of service in writing and correct any degradation within 60 days.

(2) A telecommunications provider operating in the state of Texas shall:

(A) Provide to all applicable 9-1-1 administrative entities the name, title, address, and telephone number of the telecommunications provider's 9-1-1 contact including but not limited to, a designated contact person to be available at all times to work with the applicable 9-1-1 Administrative Entities, CSEC and the commission to resolve 9-1-1-related emergencies. CSEC shall be notified of any change to a telecommuncations provider's designated 9-1-1 contact personnel within five business days.

(B) Develop a 9-1-1 disaster recovery and service restoration plan with input from the applicable regional planning commission or emergency communication district, CSEC and the commission.

(f) **Database integrity.** In order to ensure the consistent quality of database information required for 9-1-1 services, the following standards apply.

(1) A CTU operating in the state of Texas shall:

(A) Utilize a copy of the 9-1-1 administrative entity's MSAG or other appropriate governmental source, such as post offices and local governments, to confirm that valid addresses are available for 9-1-1 calls for areas where the 9-1-1 service includes selective routing, or automatic location identification, or both, in order to confirm that valid addresses are available for 9-1-1 calls. This requirement is applicable where the 9-1-1 administrative entity has submitted an

MSAG for the service area to the designated 9-1-1 database management services provider. The MSAG must be made available to the CTU at no charge and must be in a mechanized format that is compatible with the CTU's systems. This requirement shall not be construed as a basis for denying installation of basic telephone service, but as a process to minimize entry of erroneous records into the 9-1-1 system.

(B) Take reasonable and necessary steps to avoid submission of telephone numbers associated with non-dialtone generating service to the 9-1-1 database management services provider.

(C) Submit corrections to inaccurate subscriber information to the 9-1-1 database management services provider within 72 hours of notification of receipt of the error file from the 9-1-1 database management services provider.

(D) As applicable, coordinate 9-1-1 database error resolution for resale customers.

(2) A 9-1-1 database management services provider operating in the state of Texas shall:

(A) Provide copies of the MSAG(s) for the 9-1-1 administrative entities it serves to any CTU authorized to provide local exchange service within the jurisdiction of those 9-1-1 administrative entities. The 9-1-1 database management services provider shall make all updates to the MSAG electronically available to CTUs within 24 hours of update by the 9-1-1 administrative entity.

(B) Upon receipt of written confirmation from the appropriate CTU, delete inaccurate subscriber information within 24 hours for deletions of fewer than

100 records. For deletions of 100 records or more, the database management service provider shall delete the records as expeditiously as possible within a maximum time frame of 30 calendar days.

(g) **Cost recovery.** A CTU may not charge a 9-1-1 administrative entity, through tariffed or non-tariffed charges, for the preparation and transfer of files from the CTU's service order system to be used in the creation of 9-1-1 call routing data and 9-1-1 ALI data.

(h) **Unbundling.** A dominant CTU that is a 9-1-1 network services provider and a 9-1-1 database management services provider, if it has not already done so prior to the effective date of this rule, must file within 90 days from the effective date of this rule an alternative 9-1-1 tariff that provides 9-1-1 administrative entities the option to purchase any separately offered and priced 9-1-1 service.

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 rule §26.433 relating to Roles and Responsibilities of 9-1-1 Service Providers is hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 27th DAY OF APRIL 2000.

PUBLIC UTILITY COMMISSION OF TEXAS

_____

Chairman Pat Wood, III

_____

Commissioner Judy Walsh

_____

Commissioner Brett A. Perlman