The Public Utility Commission of Texas adopts new §26.461 relating to Access Line Categories. The section is adopted with changes to the proposed text as published in the August 27, 1999 *Texas Register* (24 TexReg 6616). This section is adopted under Project Number 20935.

New §26.461 implements the provisions of House Bill 1777 (HB 1777), Act of May 25, 1999, 76th Legislature, Regular Session, chapter 840, 1999 Texas Session Law Service 3499 (Vernon) (to be codified as an amendment to Local Government Code §283.001, et. seq.). The new rule is responsive to state policy articulated in HB 1777 to: (1) encourage competition in the provision of telecommunications services; (2) reduce the barriers to entry for providers of services so that the number and types of services offered by providers continue to increase through competition; (3) ensure that providers of telecommunications services do not obtain a competitive advantage or disadvantage in their ability to obtain use of a public right-of-way within a municipality; and (4) fairly reduce the uncertainty and litigation concerning franchise fees. In addition, this section is designed to ensure that municipalities: (1) retain the authority to manage a public right-of-way within the municipality to ensure the health, safety, and welfare of the public; and (2) receive from certificated telecommunications providers fair and reasonable compensation for the use of a public right-of-way within the municipality. This section relating to access line categories is adopted in accordance with the directive of HB 1777

that, not later than November 1, 1999, the commission shall establish not more than three categories of access lines for statewide use.

Prior to publication of the proposed rule, the commission staff held workshops on July 9, 1999 and July 30, 1999 at the commission offices. Input received from the commenters was used to develop the proposed rule. A public hearing on the proposed rule was held at the commission offices on October 5, 1999 at 9:30 am. Representatives from municipalities and industry, and other affected persons, attended the hearing and provided comments. To the extent comments differ from the submitted written comments, such comments are summarized herein.

In the preamble to the proposed rule, the commission requested specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed §26.461. The commission stated that it would consider the costs and benefits in deciding whether to adopt the rule. Additionally, the commission sought comment on whether the dividing line of 6.44 Mbps between proposed category 2 and category 3 was appropriate to address changes in technology in the provisioning of advanced telecommunications services. The commission also requested parties to comment on whether the commission should review this proposed division in the future and if so, how often. Where parties responded to the above questions, those comments have been summarized herein, as well.

Hearing and Commenters

The following parties filed written comments in general support of the commission's proposed categories of access lines: Austin, El Paso, Everman, Irving, Laredo, Missouri City, Plano, and Rosenberg (Cities); Addison, Bedford, Colleyville, Euless, Farmers Branch, Grapevine, Hurst, Keller, Killeen, North Richland Hills, Pasadena, Texas City, Tyler, West University Place, and Wharton (Coalition) (hereinafter, Cities and Coalition will be referred to jointly as "Cities"); Cities of Garland and San Angelo (Garland/San Angelo); the Office of Public Utility Counsel (OPUC); Texas Coalition of Cities on Franchised Utility Issues (TCCFUI), a coalition of 67 Texas cities; and the Texas Municipal League (TML). The comments of these parties are summarized generally as comments from municipalities.

The following parties filed written comments in general opposition to the commission's proposal: AT&T Communications of the Southwest, Inc. (AT&T); Allegiance Telecom, Inc., espire Communications, Inc., GST Telecom, ICG Communications, Inc., Intermedia Communications, Inc., Nextlink Texas, Inc., and Time Warner Telecom of Texas (CLEC Coalition); GTE Southwest Incorporated (GTESW); the Office of the Attorney General of Texas (OAG); Rhythms Links, Inc. and NorthPoint Communications (Rhythms/NorthPoint); Southwestern Bell Telephone Company (SWBT); TEXALTEL, and Texas Association of Business & Chambers of Commerce (TABCC). The comments of these parties are summarized generally as comments from industry.

Comments From Municipalities

TCCFUI supported the commission's proposal. TCCFUI contended that three categories of access lines would give cities maximum flexibility to allocate charges fairly among all customer classes in achieving the following goals: (a) the categories should not shift the burden of payment of fees to residential users; (b) the proposal must not result in a reduction in revenues to the city; (c) the proposal must be competitively neutral and must not discriminate against providers; and (d) the proposal should not penalize or disadvantage the development and deployment of advanced technology. TCCFUI further stated that the commission's proposal is very similar to TCCFUI's own proposal which was also three categories: (1) residential; (2) low capacity non-residential; and (3) high capacity non-residential. Although TCCFUI's original proposal used a T-1 line as the dividing line between categories 2 and 3, TCCFUI acknowledged that the 6.44 Mbps division, as proposed, accomplishes the same practical result as its T-1 suggestion. TCCFUI pointed out that, as a practical matter, in many small cities, there may not be lines greater then 6.44 Mbps, thus effectively providing only two categories of access lines for those cities. Overall, TCCFUI declared that the categories as proposed in the rule are reasonable and are consistent with the goals set forth above.

The Cities supported the comments filed by TCCFUI. Cities fully supported the adoption of three categories of access lines because an important purpose of categorizing access

lines is to enable municipalities and the commission (if the municipalities choose the commission's default allocation) to reasonably and equitably allocate the burden for payment of the municipal right-of-way fee to each category. Cities highlighted the historical differential between residential and commercial customers. They asserted that municipalities need the flexibility to apportion the collection of the legislatively mandated fee among the categories of users. Cities emphasized that this flexibility is necessary in order to mitigate the impact of the shift to the HB 1777 methodology upon ratepayers, while also preserving municipal revenue levels.

The Cities approvingly stated that the proposed rule would sensibly implement the policy goals implicit in HB 1777 and strike a fair balance between consumer interests, industry concerns, and municipalities' interests. Cities clearly found that the proposed rule also achieved the regulatory goals of simplicity, equity, administrative ease, and flexibility. They highlighted equity as a consumer issue, explaining that the proposed rule creates an equitable framework by allowing greater proportionality between the level of service and applicable fees. The three categories, as proposed, would allow the municipalities to allocate charges fairly among different types of access lines. The commission's proposal would ensure that the municipalities retain the option to make a local rate decision with regard to municipal fees; municipalities would not have an opportunity to perform this allocation if there were only one category, or even two categories of access line.

Cities asserted that the proposed categories provide a high degree of administrative ease. In particular, Cities explained that simplicity is important for customers and that all customers can understand straightforward categories based on service divisions. As capacity is an objective measure, Cities believed it would pose no difficulties to determine the category of service. Further, Cities argued that the categories provide maximum flexibility to the industry, as well.

Cities contended that the proposed rule reflects economic reality. Since the capacity of a line is related to the volume of services provided over a line, basing categories 2 and 3 on capacity correlates with the line's economic value. Cities also pointed out that limiting one of the categories to residential service is appropriate. The economic activity in high capacity business services outpaces residential services, and the categories, as proposed, would prevent the greater number of residential consumers from subsidizing business consumers.

TML endorsed and adopted the comments submitted by Cities. TML stressed that it is vital to cities that three categories of access lines be established at the beginning of this process, allowing room for the commission to make changes in 2002 if actual experience proves that the categories are unworkable or unsatisfactory. TML suggested that cities which at present do not have any category 3 access lines should be allowed to establish a category 3 access line rate following the proposal or installation of category 3 access lines, perhaps on a limited basis, but not more than once annually.

Echoing TCCFUI, Cities and TML, Garland/San Angelo supported the adoption of three categories of access lines. Garland/San Angelo emphasized that an important purpose of categorizing access lines is to enable municipalities and the commission (if municipalities choose the commission's default allocation) to reasonably and equitably allocate the burden for payment of the municipal right-of-way fee to each category. Garland/San Angelo generally supported the commission's proposal, as the categories take into account the traditional residential/commercial differentiation, while attempting to bring the concept up-to-date in technological terms.

OPUC believed that the categories of access lines represent the most reasonable organization of access lines and provide an uniform approach for assessing right-of-way fees without unduly burdening residential and small commercial customers.

Comments From Industry

The industry and TABCC objected to the proposed categories of access lines for a variety of reasons. In particular, industry argued that the proposed categories create a disincentive to the development of advanced technology, are not competitively neutral, act as barriers to entry, and would be unfair to business. In addition, industry complained that the proposal is administratively difficult and not related to the cost burden on

municipalities. Further, industry raised concerns that the proposed rule might be inconsistent with state and/or federal law.

Disincentive to Development of Advanced Technology

AT&T, the CLEC Coalition, and SWBT expressed concern that rapid technological developments could outpace the commission's ability to appropriately set capacity as a dividing line between categories. They commented that any additional costs placed on the deployment of advanced high-speed technology would create a disincentive against the development and use of advanced technology. AT&T added that either a single category of access line, or a technology-neutral category such as residential, non-residential switched, and non-residential non-switched, would avoid the potential creation of disincentives against the use of new technology. SWBT argued that splitting categories 2 and 3 based on the speed of the service would amount to a "technology tax," would discourage the use of higher capacity services, and would permit economic disincentives to limit the choice of business customers for advanced services. Further, SWBT and TABCC stated that a higher fee based on speed would result in consumers' migrating towards the lowest capacity technology to meet their needs. Both AT&T and SWBT suggested adopting only two categories of access lines – one for residential and one for business.

Not Competitively Neutral and Barriers to Entry

The OAG, GTESW, and Rhythms/Northpoint commented that a technology-based category would not be competitively neutral. Rhythms/Northpoint stated that a distinction based on bit rate is not justified. They pointed out that competitive local exchange carriers (CLECs) would be disadvantaged under the current proposal as they are more likely than incumbent local exchange carriers (ILECs) to have faster digital access lines. AT&T and the OAG stated that a technology-based category would create a barrier to entry into the telecommunications market.

Fee Increase and Unfair to Business

TABCC commented that they oppose a categorization that unfairly burdens all citizens, and particularly, business and emerging business interests. TABCC recommended a single category of access lines, and opposed creating a distinction between business and residential customers that would likely result in higher access fees for commercial accounts. A single fee structure, TABCC commented, would create a system that encourages the savings and investments necessary for the creation of jobs and would avoid placing a disproportionate share of the tax burden on employers.

AT&T and SWBT stated that a technology-based category would not be limited only to large businesses, implying that other consumer groups would also be affected by the

commission's proposal. AT&T pointed out that some residential and small-business access lines are, or will be, high-speed digital, and therefore, might be subject to significant increases in current fees. SWBT observed that a technology-based third category would apply to hospitals, clinics, banks, mortgage companies, brokers and schools who would be negatively impacted by the commission's proposal. The OAG averred that three categories may result in a discriminatory treatment of certain business customers. They recommended that the commission adopt only two categories of access lines (residential and non-residential), as billing data from state accounts show recent increases in franchise fees statewide.

Inconsistent with State and/or Federal Law

AT&T, the OAG, and SWBT asserted that technology-based categories would be inconsistent with state and/or federal law. AT&T stated that the proposed categories are inconsistent with HB 1777. AT&T further argued that recent federal court decisions imply that management and compensation for use of rights-of-way must relate directly to a provider's physical occupancy of the rights-of-way. The OAG stated that the adoption of three access line categories may be inconsistent with the statutory requirement that municipal franchise fees be passed on to customers in a pro rata manner. The OAG also argued that adopting three categories would be inconsistent with the Public Utility Regulatory Act (PURA) §54.205 and would violate §283.001(c)(2) of the Local Government Code, which requires that the municipal franchise fee method be consistent

with state and federal law. SWBT stated that a fee based on the capacity of the line would directly contradict PURA §51.001, which states: "To encourage and accelerate the development of a competitive and advanced telecommunications environment and infrastructure, new rules, policies, and principles must be formulated and applied to protect the public interest."

Administratively Difficult

The CLEC Coalition, GTESW, and SWBT commented that tracking services based on speed and/or capacity, as well as type of end-user, would be administratively difficult. GTESW favored the establishment of a single category of access lines for a variety of administrative reasons. According to GTESW, a single category would eliminate the allocation requirements for cities, eliminate the need for the commission to develop multiple rates, simplify reporting and billing requirements by the certified telecommunications providers, and lower costs and confusion to consumers. AT&T stated that each additional category would create an administrative burden on the providers, the municipalities, and the commission.

Not Related to Cost Burden on Municipalities

AT&T, the CLEC Coalition, and SWBT asserted that a technology-based category is not related to the cost or burden that an access line places on a city's right-of-way. AT&T

asserted that a two-category structure would not increase the fees currently assessed by municipalities. GTESW also stated that the three categories, as proposed, are inconsistent with the burdens placed on municipalities due to incursion of the right-of-way. TABCC commented that the public right-of-way places no greater burden on the public's property than does access to a specific residential customer, and, in general, business customers as a whole, place considerably less burden on use of the public's right-of-way than do residential customers.

De minimis and Other Comments

The OAG commented that there is no justification for dividing business customers into two categories because the number of access lines above 6.44 Mbps is *de minimis* and does not warrant a separate category. TEXALTEL expressed concerns about the "speed limit" on the categories but indicated that the number of lines in category 3 would be very small, as most lines above 6.44Mbps would fall outside the definition of "access lines." TEXALTEL supported using tariffed definitions to segregate line classifications. While they did not object to the division of categories at this time, TEXALTEL was concerned as to how the fee per line would be developed in the future for these categories. TEXALTEL also suggested defining the term "residential services."

Comments to Preamble Questions

The commission requested specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed §26.461. The commission stated that it would consider the costs and benefits in deciding whether to adopt the rule. Additionally, the commission sought comment on whether the dividing line of 6.44 Mbps between proposed category 2 and category 3 was appropriate to address changes in technology in the provisioning of advanced telecommunications services. The commission also requested parties to comment on whether the commission should review this proposed division in the future and if so, how often.

Municipalities

Cities suggested that the commission review the categories in March 2002 in conjunction with a review of the definition of access line, and each year thereafter. They stated that the threshold between category 2 and category 3 could be raised, as high bandwidth services become more prevalent. Garland/San Angelo raised concerns that the 6.44 Mbps dividing line between access line categories 2 and 3 is too high to realistically include any customers in category 3. Accordingly, Garland/San Angelo suggested that a T-1 line be used as a separator to reflect existing technology, and that if T-1 becomes ubiquitous as to no longer be meaningful, the commission could revise the categories at that time. On the other hand, OPUC supported the commission's proposal and recommended that the 6.44

Mbps dividing line between the categories 2 and 3 be reviewed no more than once every four years, with the first review to coincide with the 78th Legislative Session. OPUC's opinion was echoed by TCCFUI. TCCFUI commented that the 6.44 Mbps split between categories 2 and 3 is reasonable now and during the two year-period before mandatory commission review pursuant to §283.003(a). TCCFUI suggested that if technological advances should make this division obsolete, staff could re-write the rule during the statutorily required review two years from now. TCCFUI did acknowledge that there would be administrative costs associated with implementing HB1777 regardless of the number of categories adopted. However, TCCFUI stated that the costs associated with implementing three categories of access lines would be more than outweighed by the benefit to residential and small business customers that constitute a majority of all customers. Also, using tariffed services as a manner to count access lines would minimize costs and simplify the process of tracking and reporting access lines.

Industry

The CLEC Coalition recommended setting the dividing line between categories 2 and 3 at 8.44 Mbps, rather than at 6.44 Mbps, as it would allow for greater growth and customer migration to advanced technology without additional fees or taxes. Rhythms/Northpoint suggested a 7.1 Mbps dividing line. TEXALTEL recommended increasing the division between categories 2 and 3 from 6.44 Mbps to 10 Mbps.

Comments From Public Hearing

At the public hearing held on October 5, 1999, TEXALTEL suggested defining the term "customer" in the rule. However, AT&T commented that it would be more appropriate to define the term as part of the proposed §26.465 relating to Methodology for Counting Access Lines and Reporting Requirements for Certificated Telecommunications Providers (CTPs). The Coalition commented that anybody buying services is a customer, which could include wireless providers that purchase services.

AT&T commented that the possibility of re-allocation between categories, at a later date, highlights additional issues related to having three categories of access lines, difficulties which would not be present with only two categories. AT&T argued that a residential and a non-residential category has inherent self-policing. The Coalition and the OAG opposed adoption of categories based on residential, non-residential, and private lines. Cities pointed out that the rate for a third category such as private lines would be capped by the cost of the lowest level of service in that category. The OAG proposed adopting two categories, residential and non-residential, as a compromise.

Commission Analysis

The commission appreciates the active participation and comprehensive written and oral comments of all representatives during the workshops and public hearing. The wide

range of options for categories put forward by commenters highlights the challenge inherent in establishing a set of categories that: (1) is administratively simple for municipalities and telecommunications providers; (2) is consistent with state and federal law; (3) is competitively neutral; (4) is nondiscriminatory; (5) is consistent with the burdens on municipalities created by the incursion of certificated telecommunications providers into a public right-of-way; and (6) providers fair and reasonable compensation for the use of public right-of-way.

Nonetheless, commenters were successful in highlighting advantages and disadvantages of the proposed language, offering alternatives for improving the commission's original proposal. Therefore, after careful review, the commission has chosen to revise its rule language to adopt the following categories of access lines:

(1) Category 1 shall include both analog and digital residential switched access lines. It shall also include point-to-point private lines, whether residential or non-residential, only to the extent such lines provide burglar alarm or other similar security services.

(2) Category 2 shall include all analog and digital non-residential access lines.

(3) Category 3 shall include all other point-to-point private lines, whether residential or non-residential, not otherwise included within category 1.

Rationale for the Commission's Revised Categories

One of the commission's primary goals in drafting rules within the framework of HB 1777 has been to ensure that all affected parities will be able to meet their statutory responsibilities in a timely manner. As has been noted throughout the rulemaking process, HB 1777 implementation is constrained by statutory deadlines. For instance, as part of reporting their base amount for 1998, municipalities will be required to investigate their records and determine their compensation from CTPs. This is an especially large burden in municipalities where there are multiple CTPs operating in public rights-of-way, along with a host of other non-CTP users of the public rights-of-way. Similarly, CTPs are now subject to a new definition of access line, new categories, an as-yet-unknown counting methodology, and a requirement to file their line counts by January to allow sufficient time for the commission to establish rates by the statutorily mandated date of March 1, 2000. Each of these regulatory requirements will necessitate changes in the billing systems of the CTPs. Given that these billing systems must incorporate different fee-per-line rates for 1200 cities in Texas simultaneously, within a relatively short time, the scope of the task becomes monumental. Therefore, the transition to a uniform method of municipal compensation for the use of a public right-of-way by a CTP must take into account practical realities faced by all parties to comply with the requirements of HB 1777.

The issue of changes to a CTP's billing systems as a result of HB 1777 is heightened in importance by the fact that the composition of each category will be the single most important factor affecting this change. A set of categories that can be easily recognized and understood, and which closely matches existing billing systems, will likely result in more accurate and timely reporting of access line count by CTPs. The commission believes that the revised set of categories closely resembles categories that already exist in many franchise agreements throughout Texas, and is identifiable by the billing systems of most CTPs today.

However, ease of billing is not the only factor to be considered under HB 1777. Throughout the rulemaking process, industry representatives have argued strongly on behalf of a single category of access lines. These commenters have pointed to the language allowing the commission to adopt "not more than three categories of access lines" and have highlighted the bill's goal of administrative ease as support for a single category. While administrative ease certainly is one of the goals of HB 1777, it is only one such goal that must be balanced against other provisions of HB 1777. In particular, HB 1777 grants a municipality the right to allocate its base amount between the different categories of access line. If the commission were to adopt a single category, several sections of HB 1777 would become null and void, and municipalities would lose their right to exercise local control by allocating between access line categories.

HB 1777 represents a substantial change in how municipal franchise fee compensation is calculated, and because the commission, in 2002, is required to review the definition of access line and the commission's categories, the commission is inclined to conservatively interpret HB 1777. The new, statewide, uniform fee-per-line method of calculating franchise fee compensation for three categories under HB 1777 is a significant departure from many municipalities' current franchise fee compensation methods. But even where cities are using a fee-per-line method, the definition of access line and the city's specific categories do not necessarily coincide with those proposed under HB 1777. Accordingly, the commission hopes to ease the transition to a new method of franchise compensation by minimizing the possibility of "rate shock" to customers. This rate shock would primarily affect residential customers as this group has historically paid lower franchise fees than has the class of non-residential or commercial customers. Moreover, a fee protection to the residential class of customers is consistent with several existing provisions in PURA.

As a compromise position, several representatives from industry recommended a two-category approach, comprised of residential and non-residential. While this proposal is appealing, it does not take into account the inherent differences embedded in the counting of switched versus nonswitched lines. While a switched line is assessed a single municipal fee, a nonswitched (or private line) is typically assessed two municipal fees. This difference is due to the fact that the fee on the nonswitched line is assessed based on the number of terminating points (two), rather than on the number of lines (one). If both

switched and nonswitched lines are placed in the same category, a municipality loses flexibility should it desire to ensure that rates for comparable switched and nonswitched services remain the same. The three categories of access lines, as revised by the commission, are designed to give municipalities the opportunity to fairly allocate the franchise charges between the different categories of access lines. If changes in technology, facilities, or competitive or market conditions in the future should justify a modification in the commission-established categories of access lines or, if necessary, the adoption of a definition of "access line", the commission is authorized to review conditions and make an appropriate modification at that time. Accordingly, the commission does not choose to adopt two categories at this time, but will monitor conditions to determine whether a revision is authorized after March 1, 2002.

Finally, the commission has chosen to revise the categories, as originally proposed, to avoid the use of technology or speed as a dividing line between the categories of access lines. By retaining three categories and yet removing capacity as a distinction, the commission believes that it has balanced the competing interests of municipalities and telecommunications providers, while complying with policies specified in HB 1777. The commission believes that this categorization of access lines will be easy to administer, will promote competition, will encourage the development of new technologies, and will protect residential customers from significant cost increases, while still allowing cities to receive fair and reasonable compensation for the use of public rights-of-way.

Definition of Terms

The commission agrees with TEXALTEL that defining the term "residential" may be necessary to provide clarity. Therefore, the commission defines the term "residential" by adopting the definition recommended by TEXALTEL. However, the commission disagrees with TEXALTEL that the term "customer" should be defined in this rule. Instead, as AT&T proposed, the term will be addressed as part of the forthcoming proposed rule, §26.465.

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

This new rule is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. This rule is also authorized by House Bill 1777 (HB 1777), Act of May 25, 1999, 76th Legislature, Regular Session, chapter 840, 1999 Texas Session Law Service 3499 (Vernon) (to be codified as an amendment to Local Government Code §283.055) which provides that not later than November 1, 1999, the commission shall establish not more than three categories of access lines for statewide use.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and Local Government Code §283.055.

§26.461. Access Line Categories.

(a) **Purpose**. This section establishes three competitively neutral, non-discriminatory categories of access lines for statewide use in establishing a uniform method for compensating municipalities for the use of a public right-of-way by certificated telecommunications providers (CTPs).

(b) **Application**. The provisions of this section apply to CTPs, as defined by subsection (c)(2) of this section, and to municipalities in the State of Texas.

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

(1) **Access lines** – As defined in Local Government Code §283.002 (1).

(2) **Certificated telecommunications provider (CTP)** – A person who has been issued a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority by the commission to offer local exchange telephone service.

(3) **Public right-of-way** – The area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the municipality has an interest. The term does not include the airways above a right-of-way with regard to wireless telecommunications.

(4) **Residential** – Services provided at residential locations and primarily for residential (non-commercial) use. Definitions in the tariffs or price sheets of the provider, and the determinations made by provider for billing purposes shall control, unless the provider's definitions unreasonably depart from the general definition herein for purposes of avoidance of the payment of appropriate fees to the municipality.

(5) **Non-Residential** – All other locations not served by a residential line.

(d) **Access line categories**. There shall be three categories of access lines. The three categories shall be as follows:

(1) Category 1 shall include both analog and digital residential switched access lines. It shall also include point-to-point private lines, whether residential or non-residential, only to the extent such lines provide burglar alarm or other similar security services.

(2) Category 2 shall include all analog and digital non-residential switched access lines.

(3) Category 3 shall include all other point-to-point private lines, whether residential or non-residential, not otherwise included within category 1.

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 §26.461 relating to Access Line Categories is hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 27th DAY OF OCTOBER 1999.

PUBLIC UTILITY COMMISSION OF TEXAS

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Chairman Pat Wood, III

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Commissioner Judy Walsh

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Commissioner Brett A. Perlman