PROJECT NO. 26412

RULEMAKING TO AMEND P.U.C. SUBSTANTIVE RULE 26.465	**§**	**PUBLIC UTILITY COMMISSION**
	§	
	§	**OF TEXAS**

ORDER ADOPTING AMENDMENTS TO §26.465 AS APPROVED AT THE FEBRUARY 13, 2003 OPEN MEETING

The Public Utility Commission of Texas (commission) adopts an amendment to §26.465, relating to Methodology for Counting Access Lines and Reporting Requirements for Certificated Telecommunications Providers with changes to the proposed text as published in the September 27, 2002 *Texas Register* (27 TexReg 9069). The amendment clarifies the definition of "transmission path," eliminates the reference to the Tel-Assistance program, and deletes certain reporting requirements in this section. The reporting requirements are consolidated with the reporting requirements in §26.467 of this title (relating to Rates, Allocation, Compensation, Adjustments and Reporting). This amendment is adopted under Project Number 26412.

A public hearing on the amendment was held at commission offices on December 4, 2002. Representatives from Allegiance Telecom, Inc., Global Crossing Telemanagement, Inc., Qwest Communications Corp., and Time Warner Telecom of Texas, L.P. (CLEC Coalition of Cities), the Cities of Addison, Austin, Bedford, Colleyville, Denton, El Paso, Farmers Branch, Grapevine, Hurst, Keller, Missouri City, North Richland Hills, Pasadena, Round Rock, Tyler, Westlake, West University Place, and Wharton (Coalition of Cities), the City of Houston (Houston), the City of Dallas (Dallas), Texas Statewide Telephone Cooperative, Inc. (TSTCI), John Staurulakis, Inc. (JSI), the City of Plano (Plano), AT&T Communications of Texas, L.P., TCG Dallas, and Teleport Communications Houston, Inc. (AT&T), GTE Southwest

Incorporated, doing business as Verizon Southwest (Verizon), Southwestern Bell Telephone, L.P., doing business as Southwestern Bell Telephone Company (SWBT), Valor Telecommunications, LLC (Valor), the Texas Telephone Association (TTA), and Fox, Smollen, and Associates (FSA) attended the hearing and provided comments. To the extent that these comments differ from the submitted written comments, such comments are summarized herein.

The commission received written comments on the proposed amendment by October 28, 2002 from the City of Garland (Garland), Coalition of Cities, the Texas Coalition of Cities for Utility Issues (TCCFUI), Plano, Houston, Dallas, and Verizon. Reply comments were received by November 12, 2002 from Houston, AT&T, Coalition of Cities, SWBT, Verizon, and the State of Texas (State).

Transmission Path

The State asserted that an access line has been defined by statute in Texas Local Government Code (LGC), §283.002(1) in such a way as to exclude Digital Subscriber Line (DSL) services, and that no change should be made to §26.465(c)(2) which could be interpreted to include DSL services as access lines.

SWBT argued that definitions in the Public Utility Regulatory Act (PURA) and Texas Local Government Code, Chapter 283 (Chapter 283) explicitly exclude DSL data services from access lines. SWBT contended that counting DSL data services as access lines would cause significant

harm to all certificated telecommunications providers (CTPs) that provide DSL services in competition with, among others, cable modem services that are excluded from the definition. SWBT argued that the current statutory and commission definitions of "access line" and the categories established thereunder do not encompass DSL, and no changes were made as a result of Project Number 25450, *Rulemaking to Address the Redefinition of Access Line and Other Related Outstanding Access Line Implementation Issues*, that would permit such a conclusion.

SWBT argued that DSL is not an access line, as it fits none of the three definitions in LGC §283.002(1). SWBT contended that DSL services are not PBX-type services. SWBT asserted that point-to-point lines provide private access only between points established and designated by a customer, but that DSL services are typically interstate, broadband Internet access products, and therefore do not terminate at end points selected by the customer. SWBT further maintained that a transmission path must allow the delivery of local exchange telephone services, and the PURA definition expressly excludes DSL services from a categorization of "local exchange telephone service." SWBT maintained that the definitions in PURA of "local exchange telephone services" and "basic local telecommunications service" clearly exclude DSL services from the definition of an "access line" because DSL service is non-voice data transmission that is offered as a separate service over a physical facility on which an access line fee is typically already assessed.

SWBT maintained that if a virtual switched service does not provide local exchange telephone services, then it is not an access line, but if a virtual switched service does provide local

exchange telephone services, then it is already included as an access line. SWBT contended that DSL services compete directly with cable modem service for the provision of high-speed Internet connections. SWBT argued that the Federal Communications Commission (FCC) recently reclassified cable modem service as an "information service" with a telecommunications component. SWBT asserted that cable modem service is not a telecommunications service subject to municipal fees or a cable service subject to franchise fees, and if the commission imposes municipal fees on typical DSL services, the result would be discriminatory against CTPs and DSL providers in direct contravention of the statutory purpose of Chapter 283 that the scheme be competitively neutral. SWBT contended that the revenue generated by CTPs on any particular service is not relevant, in any way, to an analysis of whether DSL services should be considered separate access lines.

Verizon stated that a basic tenet of LGC §283.002(1)(B) is to assure there are no duplicate or multiple assessments of the municipal fee on a single access line. Verizon added that in both line splitting and line sharing there is still just one line within the public right-of-way (ROW). Verizon asserted that in both line splitting and line sharing, the entity providing the voice services should be accountable for reporting this access line to the commission and compensating the appropriate municipalities the municipal fee. Verizon pointed out that the commission, in Project Number 25450, addressed whether changes in the definition of access line, including DSL service, were needed and that the commission concluded that no amendment was justified. Verizon argued that another duplicative review of this same matter so soon after a comprehensive review is unwarranted.

Verizon added that assessing multiple fees on a single line would also increase the cost of DSL and would discourage new competition and investment by the telecommunications industry, deter a citizen's ability to afford high speed access, and unduly and discriminatorily penalize CTPs when other providers of broadband service, such as cable providers, will not be required to pay multiple municipal fees when they serve the same customer.

Verizon argued that Chapter 283 did not use access lines as a proxy for the former gross receipts franchise fees, and that fees should not grow as new services are provided to customers. Verizon stated that many cities, during the 1980s and 1990s entered into flat fee or fee per access line agreements for ROW use, and that these agreements were not designed to be the equivalent of gross receipts. Verizon added that even under the old percentage of revenue agreements, interstate services, such as DSL, would have been excluded. Verizon concluded that the argument that municipal fees should grow as services that do not generate additional access lines grow is not an accurate picture of city fee agreements prior to Chapter 283, and such an argument should not be given merit.

AT&T argued that there must be more work on the concept of "voice grade equivalents," which some cities have proposed for reporting and payment purposes where voice service is provided in a packet-switched environment. AT&T stated that it currently does not provide local exchange service through Voice over Internet Protocol (VoIP) or packet switching technology and cannot say it is possible to apply the rule's channelization requirements for "switched"

services to VoIP or other packet switched voice services. AT&T asserted that it would be premature to expand the definition of a "transmission path" to include all "switching" technologies, other than circuit switching, used for voice until it is clear how such other "switched" transmission paths can and should be counted. AT&T also stated that it continues to oppose any further expansion of the channelization concept.

AT&T agreed that the switching technology used to route local exchange service should not be the deciding factor in whether such basic voice service is included as an access line for ROW compensation purposes. AT&T argued, however, that there are still too many discrepancies between the Texas statutory and regulatory approach towards compensation for use of ROW and the compensation requirements of the Federal Telecommunications Act (FTA) to justify modifying the current definitions of "access line" so as to expand the fee-base for ROW compensation in a way that further deviates from the concept of cost-causation.

AT&T argued that both the Coalition of Cities and Plano ignore the basic requirement in LGC §283.003(1)(A) and §26.465(c)(2) that the new access line regime was intended to assess switched lines used for local exchange service. AT&T stated that the commission recognized this when it originally rejected inclusion of DSL lines from access line counts in Project Number 20935, *Implementation of HB 1777*, and the commission also observed in its Order Adopting §26.465, Project Number 20935 (December 20, 1999) (20935 Order) that the Plain Old Telephone Service (POTS) line over which DSL is provided is clearly distinguishable from the other principle statutorily defined access line, the point-to-point line. AT&T asserted that in that

regard, DSL seems more like a vertical service, and therefore should not be counted as a separate access line. AT&T asserted that the commission may need to clarify what it means by "DSL service", though it would probably be agreed that a DSL-capable line permits high-speed data transmission over the same analog line that can provide basic voice service, and it would therefore be appropriate for the voice service over the DSL-capable POTS line to be counted, but not the data service. Otherwise, AT&T argued, the logical extension of the cities' arguments would be that dial-up Internet access provided by a POTS line would constitute a separate service that should also be counted as a separate access line.

AT&T argued that the commission adopted the concept of services as a proxy for facilities or access lines because of the difficulty of counting actual transmission facilities. AT&T further contended that, while the commission has stated that the fee-per-access line compensation methodology and the fees paid are a proxy for the compensation formerly received by a city under the franchise regime, the new regime was not intended to continually raise the compensation for cities as the number of services grows. AT&T disagreed with the argument that growth in services should mean growth in ROW fees because under the previous gross receipts scheme, increases in services meant increases in fees. AT&T argued that new services do not automatically translate into additional revenues and if the access line approach was meant to be a complete proxy for the previous gross receipts approach, there would have been little sense in the Legislature adopting the access line approach in the first place.

The Coalition of Cities asserted that VoIP is virtually the same as a conventional switched line and should count virtually the same. Coalition of Cities added that if the packet switched VoIP telephonic lines are deemed no more than private lines with individual termination points, the revenues to cities would dramatically decrease while the revenues generated over those lines to CTPs will stay the same and perhaps increase, which was not the intent of Chapter 283. Coalition of Cities asserted this does not allow consistent compensation to cities, as required by Chapter 283 and that this decrease in city revenue is the opposite of what would have occurred under a gross receipts franchise fee base.

The Coalition of Cities supported the deletion of "circuit" switch, but added that the definition should refer to a "virtual" switch or to any other technology which is effectively and functionally the equivalent to a switched service. Coalition of Cities stated that it agrees with the commission's analogy that services are a proxy for access line. Coalition of Cities stated access lines were used in Chapter 283 as a proxy for the former gross receipts franchise fee, and that to ensure consistent compensation to municipalities as required by LGC §283.003(b), as services grow, access line fee payments to cities should also grow, and that the only way to address this in a comprehensive manner is to include new services as proxies for access lines.

The Coalition of Cities disagreed with the 20935 Order by asserting that DSL service is being used for the purpose of providing point-to-point access, and should be counted as access lines. Coalition of Cities stated that in the Revised Arbitration Award for P.U.C. Docket Number 22469, *Petition of Rhythms Lengths, Inc. against Southwestern Bell Telephone Company for*

Post-Interconnection Dispute Resolution and Arbitration under the Telecommunication Act of 1996 regarding rates, Terms, Conditions and Related Arrangements for Line Sharing (September 21, 2001) (Line Sharing Order), the commission suggested that DSL may count as an access line in a line sharing situation, because the splitter provides access to the same functionality of the loop in both line-splitting and line-sharing contexts. Coalition of Cities argued that when there are separate services being provided over the same line by the same or different CTPs, be it by line sharing or by line splitting, each service provided should count as an access line. Coalition of Cities argued that this is consistent with the proxy notion that services equate to access lines which the commission previously articulated.

The Coalition of Cities stated that the appropriate compensation would depend on the service provided, as voice grade switched service would be a category 1 or 2 access line, while a data service would be a category 3 access line. Coalition of Cities argued that DSL would have been part of the gross receipts franchise fee base. Coalition of Cities contended that, because DSL as a service is a proxy for access lines, DSL should now be included as an access line either as a point-to-point service or a category 1 or 2 access line.

The Coalition of Cities argued that the statute refers to no duplication of fees on a single service rather than on a single access line. Coalition of Cities asserted that a single access line would be equivalent to a single service, rather than a single physical line. Coalition of Cities argued that to ensure consistent compensation to cities as required by LGC §283.003(b), as services grow, access line fee payments should also grow. Coalition of Cities added that otherwise, as new

services are provided over the same physical facilities, access line fee compensation will diminish. Coalition of Cities argued that, in a line-sharing or splitting situation, all entities provided services should compensate the city.

Houston stated that every service must be recognized as a switched transmission path, consistent with the agreed premise that services are a proxy for access lines under the uniform compensation scheme of Chapter 283, and asserted that the "Virtual Switched Service" definition proposed by the Coalition of Cities achieves this goal. Houston stated that applying the "functionally equivalent" test, VoIP and DSL would be counted as access lines, and added that the same reasoning applies in both line splitting and line sharing situations. Houston added that counting all services as access lines avoids treating either reselling or underlying CTPs and municipalities differently based on the technology used and therefore implements Chapter 283 on a technologically neutral basis.

Plano stated that the commission's proposed revisions to subsection (c)(2)(A) clearly concur with Plano's assertion that DSL service delivered over the same physical path as switched, voice-grade, local exchange service constitutes a separate transmission path, and thus a separate access line. Plano argued that the compensation scheme established in Chapter 283 is a blend of physical facilities and telecommunications services; the definition of access line in §283.002(1) supports this contention because it refers to transmission path and transmission media – clearly relating to both services and facilities. Plano remarked that the commission clearly understood that transmission paths were associated with services and that transmission media were

associated with physical facilities when it adopted the original §26.465(c)(2). Plano asserted that the commission should never have originally excluded DSL service, and that DSL does and always has fallen within the original definition of transmission path in §26.465(c)(2).

Plano argued that DSL is a circuit-switched service which requires the use of a DSL circuit, where the service is provisioned by a CTP and a Digital Subscriber line Access Multiplexer (DSLAM), which serves as the switch, in order to provide the service over a voice-grade line. Therefore, Plano contended that, under the original §26.465, DSL service should have been counted as an access line. Plano stated that proposed subsection (c)(2)(A) would provide that each individual switched service would constitute a single, and therefore separate transmission path. Plano and Garland asserted that since DSL is a switched service, it would still constitute a separate transmission path and therefore a separate access line separate from the switched voice-grade local exchange service that should be counted by CTPs.

Garland stated that once the proposed amendments to §26.465(c)(2)(A) are adopted, the revision will implicitly capture DSL as a separate transmission path, as there would be no reason not to consider DSL as a separate transmission path and therefore a separate access line. Garland asserted that if the commission determines that the revision is not sufficiently clear on this point, it could revise the section to specifically include DSL as a separate service and path.

Dallas expressed support for the commission's efforts to move away from technology-based distinctions and towards distinctions based on the function of services to determine what is and

is not an access line, which will allow the market to make the technology choices rather than artificially influencing choices through regulation. Dallas asserted that DSL service delivered over the same path as switched voice-grade local exchange service constitutes a separate transmission path, and therefore a separate access line, and that this is evident from the commission's proposed revision to §26.465(c)(2)(A).

Commission response

The commission's amendment to the definition of transmission path does not alter the requirement that an access line must be switched, but rather removes the limitation that the switch used must be a circuit-switch. In practice, a switch is a relatively simple concept. A switch creates a pathway between end-users. This pathway is not necessarily a dedicated circuit, but routes information between these end-users. Functionality, rather than technology, is the threshold.

By eliminating the requirement that a switched access line must be circuit-based, the commission lifts the restraint on technologies used in switching, thus allowing for the recognition of existing and future switching technologies, such as packet switches. The commission's amendment to the definition of transmission path does not alter the requirement delineated in the definition of access line in LGC §283.002(1) that the switched access line must allow the delivery of local exchange telephone service (LETS).

According to PURA §51.002(5), LETS is telecommunications service provided within an exchange to establish connections between customer premises within the exchange, including connections between a customer premise and a long distance provider serving the exchange. LETS includes tone dialing service, service connection charges, and directory assistance services offered in connection with basic local telecommunications service (BLTS) and interconnection with other service providers. LETS specifically does not include non-voice data transmission service offered as a separate service and not as a component of basic local telecommunications service, whether offered on an intraexchange or interexchange basis.

According to PURA §51.002(1), BLTS consists of eight components, which are: (A) flat rate residential and business local exchange telephone service; (B) tone dialing service; (C) access to operator services; (D) access to directory assistance services; (E) access to 911 service provided by a local authority or dual party relay service; (F) the ability to report service problems seven days a week; (G) lifeline services; (H) and any other service determined by the commission after due process to be BLTS.

In order to qualify as LETS, the switched voice service, whether circuit-switched, packet-switched, or switched by other means, must have the capability to meet all eight requirements of BLTS offered in connection with tone dialing service, service connection charges, directory assistance services, and interconnection with other service providers.

The definition of "access line" in LGC §283.002(1) holds that a switched service must "allow the delivery of LETS" to be an access line. "Allow" is the operative word in the phrase "allow the delivery of LETS." The commission interprets the phrase "allows the delivery of LETS" in this context to mean that, using the most current technology as deployed in the network at any given time, the switched service would enable the possibility of provisioning LETS.

With circuit-switched lines, the equipment as currently deployed would allow the provisioning of LETS. PURA §51.002(5) states that non-voice data transmission service, when offered as a separate service and not as a component of BLTS, is not LETS. However, to the extent that such lines allow the delivery of LETS, i.e. enable the possibility of provisioning LETS as deployed in the network at any given time, they would be classified as access lines under Chapter 283.

On the other hand, however, lines switched by packet switches may need to be modified in the way they are deployed in the network at any given time in order for the facility to allow the delivery of LETS. A packet-switched line that connects directly to the Asynchronous Transfer Mode (ATM) network will not meet all of the requirements for BLTS without some special equipment or process in place to ensure that, for instance, access to 911 service provided by a local authority is available. Therefore, voice-based packet-switched services, such as Voice over Internet Protocol (VoIP), may be access lines, but only if they include all eight components of BLTS offered in connection with tone dialing service, service connection charges, directory assistance services, and interconnection with other service providers. This means that those VoIP offerings that do not meet the eight requirements of BLTS in attempting to allow the

delivery of LETS are not truly LETS offerings and, therefore, not access lines in the context of Chapter 283. The technology used by the CTP to offer the packet-switched line is irrelevant to its designation as an access line. Once again, functionality, rather than technology, is the threshold. Any concern about compliance with this rule should not be an issue because CTPs involved in making the packet-switched line LETS-compliant should have no difficulty in classifying the packet-switched service as an access line and counting it appropriately.

Several parties proposed to include voice-grade equivalence into the definition of transmission path. However, the commission finds that the concept of voice-grade equivalence has not been sufficiently explored in this context and appears to add little, if anything, to the definition as proposed. Therefore, the commission declines to add such language.

The commission specifically requested comments regarding the delivery of DSL service over the same physical path as switched voice-grade local exchange service. Some parties commented on stand-alone DSL, as well. In the 20935 Order, the commission refrained from a premature determination on whether and how DSL service should be classified in the access line count. The commission found at that time that DSL, by bypassing the circuit-switch and by potentially being classified as non-voice data transmission service, could not be a switched transmission path, but was also not a point-to-point line.

In the above discussion regarding which circuit-switched and packet-switched services are access lines, the commission addresses many of the concerns about DSL that arose in the 1999

Order. The commission finds that, unless the DSL service has been modified to allow the delivery of LETS, DSL is non-voice data transmission service offered as a separate service, whether provisioned on a stand-alone basis or through a line-splitting or line-sharing arrangement in conjunction with POTS. Only when DSL service is being provisioned to allow LETS-compliant voice service would it qualify as an access line for the purposes of Chapter 283.

So, to clarify its previous decisions, the commission finds that POTS lines are access lines, because regulation ensures that POTS meets the eight requirements of BLTS offered in connection with tone dialing service, service connection charges, directory assistance services, and interconnection with other service providers. Therefore, POTS lines allow the delivery of LETS and meet all of the requirements of access lines under Chapter 283.

The commission also finds that any voice or data services switched by a circuit-switch may be access lines if the equipment enables the possibility of meeting the eight requirements of BLTS offered in connection with tone dialing service, service connection charges, directory assistance services, and interconnection with other service providers. Therefore, even circuit-switched non-voice data transmission paths of the transmission media may qualify as access lines in LGC §283.002(1), provided that they allow the delivery of LETS. An example of a data transmission service that would meet this definition is ISDN service, while an example of a data transmission service that would *not* meet this definition is switched 56 kbps service. The former may allow the delivery of LETS because it allows the provisioning of 911 service, whereas the latter would

not allow the delivery of 911 service without modification of the equipment or lines as deployed in the network at any given time.

Further, the commission finds that *only those* packet-switched voice services that have been modified to meet the eight requirements of BLTS offered in connection with tone dialing service, service connection charges, directory assistance services, and interconnection with other service providers can be found to allow the delivery of LETS. Thus, only such packet-switched voice services are access lines under Chapter 283. This assessment includes DSL service. When DSL service is being offered in conjunction with POTS through a line-splitting or line-sharing arrangement, the POTS line is the only access line unless the DSL service has been modified to allow LETS-compliant voice service, in which case it would be a separate category one or category two access line, as applicable. Similarly, when DSL service is being offered on a stand-alone basis, it is only an access line if it has been modified to allow LETS-compliant voice service, in which case it would be classified as a category one or category two access line, as applicable.

Amendments to Reporting Requirements

Plano and Garland suggested the reference to "Subsection (g)(2)(B) of this section" be changed to "Rule 26.467(k)(3)." Plano and Garland suggested that since the commission intends to remove all reporting requirements to §26.467, that subsections §26.465(i), (k), and (l) be likewise moved to §26.467.

Commission response

The commission agrees with parties that any specific references to the language in subsection §26.465(g) should be changed to refer to §26.467 of this title, and modifies the language in subsections §26.465(h) and (l) accordingly. The commission declines to move subsections §26.465(i), (k), and (l) at this time, as they are not specific reporting requirements.

Reporting procedures and requirements

The commission declines at this time to delete the initial reporting procedures as proposed because leaving the language intact provides a historical record for CTPs and the commission. All other language regarding subsequent reporting requirements is deleted from §26.465 and moved, as relevant, to §26.467, as proposed in Project Number 25433, *Rulemaking to Address Municipal Authorized Review of Access Line Reporting*. The commission may choose to revisit this language in the future.

No comments were received regarding the elimination of the reference to the Tel-Assistance program.

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 amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2003) (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, House Bill 2156, 77th Legislature, which repealed the Tel-Assistance program, and Texas Local Government Code, §283.058, which grants the commission the jurisdiction over municipalities and CTPs necessary to enforce the whole of Chapter 283 and to ensure that all other legal requirements are enforced in a competitively neutral, non-discriminatory, and reasonable manner.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §55.015 and Texas Local Government Code, §283.058.

§26.465. Methodology for Counting Access Lines and Reporting Requirements for Certificated Telecommunications Providers.

(a) **Purpose**. This section establishes a uniform method for counting access lines within a municipality by category as provided by §26.461 of this title (relating to Access Line Categories), sets forth relevant reporting requirements, and sets forth certain reseller obligations under the Local Government Code, Chapter 283.

(b) **Application**. This section applies to all certificated telecommunications providers (CTPs) in the State of Texas.

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

(1) **Customer** — The retail end-use customer.

(2) **Transmission path** — A path within the transmission media that allows the delivery of switched local exchange service.

(A) Each individual switched service shall constitute a single transmission path.

(B) Where services are offered as part of a bundled group of services, each switched service in that bundled group of services shall constitute a single transmission path.

(C) Services that constitute vertical features of a switched service, such as call waiting, caller-ID, etc., that do not require a separate switched path, do not constitute a transmission path.

(D) Where a service or technology is channelized by the CTP and results in a separate switched path for each channel, each such channel shall constitute a single transmission path.

(3) **Wireless provider** — A provider of commercial mobile service as defined by §332(d), Communications Act of 1934 (47 U.S.C. §151 *et seq*.), Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993 (Public Law 103-66).

(d) **Methodology for counting access lines.** A CTP's access line count shall be the sum of all lines counted pursuant to paragraphs (1), (2), and (3) of this subsection, and shall be consistent with subsections (e), (f) and (g) of this section.

(1) **Switched transmission paths and services.**

(A) The CTP shall determine the total number of switched transmission paths, and shall take into account the number of switched services provided and the number of channels used where a service or technology is channelized.

(B) All switched services shall be counted in the same manner regardless of the type of transmission media used to provide the service.

(C) If the transmission path crosses more than one municipality, the line shall be counted in, and attributed to, the municipality where the end-use

customer is located. Pursuant to Local Government Code §283.056(f), the per-access-line franchise fee paid by CTPs constitutes full compensation to a municipality for all of a CTP's facilities located within a public right-of-way, including interoffice transport and other transmission media that do not terminate at an end-use customer's premises, even though those types of lines are not used in the calculation of the compensation.

(2) **Nonswitched telecommunications services or private lines.**

(A) Each circuit used to provide nonswitched telecommunications services or private lines to an end-use customer, shall be considered to have two termination points, one on each customer location identified by the customer and served by the circuit.

(B) The CTP shall count nonswitched telecommunications services or private lines by totaling the number of terminating points within a municipality.

(C) A nonswitched telecommunications service shall be counted in the same manner regardless of the type of transmission media used to provide that service.

(D) A terminating point shall be counted in, and attributed to, the municipality where that point is located. In the event a CTP is not able to identify the physical location of the terminating point, that point shall be attributed to the municipality identified by the CTP's billing systems.

(E) Where dark (unlit) fiber is provided to an end-use customer who then lights it, the line shall be counted as a private line, by default, unless it is evident that it is used for providing switched services.

(3) **Central office based PBX-type services**. The CTP shall count one access line for every ten stations served.

(e) **Lines to be counted.** A CTP shall count the following access lines:

(1) all access lines provided to a retail end-use customer;

(2) all access lines provided as a retail service to other CTPs and resellers for their own end-use;

(3) all access lines provided as a retail service to wireless telecommunication providers and interexchange carriers (IXCs) for their own end-use;

(4) all access lines a CTP provides as employee concession lines and other similar types of lines;

(5) all access lines provided as a retail service to a CTP's wireless and IXC affiliates for their own end-use, and all access lines provided as a retail service to any other affiliate for their own end-use;

(6) dark fiber, to the extent it is provided as a service or is resold by a CTP and shall exclude lines sold and resold by non-CTPs;

(7) any other lines meeting the definition of access line as set forth in §26.461 of this title; and

(8) Lifeline lines.

(f) **Lines not to be counted.** A CTP shall not count the following lines:

(1) all lines that do not terminate at an end-use customer's premises;

(2) lines used by providers who are not end-use customers such as CTP, wireless provider, or IXC for interoffice transport, or back-haul facilities used to connect such providers' telecommunications equipment;

(3) lines used by a CTP's wireless and IXC affiliates who are not end-use customers, for interoffice transport, or back-haul facilities used to connect such affiliates' telecommunications equipment;

(4) lines used by any other affiliate of a CTP for interoffice transport; and

(5) any other lines that do not meet the definition of access line as set forth in §26.461 of this title.

(g) **Reporting procedures and requirements.**

(1) **Who shall file.** The record keeping, reporting and filing requirements listed in this section or in §26.467 of this title (relating to Rates, Allocation, Compensation, Adjustments and Reporting) shall apply to all CTPs in the State of Texas.

(2) **Initial reporting requirements.**

(A) No later than January 24, 2000, a CTP shall file its access line count using the commission-approved *Form for Counting Access Line or Program for Counting Access Lines* with the commission. The CTP shall report the

access line count as of December 31, 1998, except as provided in subparagraph (C) of this paragraph.

(B) A CTP shall not include in its initial report any access lines that are resold, leased, or otherwise provided to a CTP, unless it has agreed to a request from another CTP to include resold or leased lines as part of its access line report.

(C) A CTP that cannot file access line count as of December 31, 1998 shall file request for good cause exemption and shall file the most recent access line count available for December, 1999.

(D) A CTP shall not make a distinction between facilities and capacity leased or resold in reporting its access line count.

(h) **Exemption**. Any CTP that does not terminate a franchise agreement or obligation under an existing ordinance shall be exempted from subsequent reporting pursuant to §26.467 of this title unless and until the franchise agreement is terminated or expires on its own terms. Any CTP that fails to provide notice to the commission and the affected municipality by December 1, 1999 that it elects to terminate its franchise agreement or obligation under an existing ordinance, shall be deemed to continue under the terms of the existing ordinance. Upon expiration or termination of the existing franchise agreement or ordinance by its own terms, a CTP is subject to the terms of this section.

(i) **Maintenance and location of records.** A CTP shall maintain all records, books, accounts, or memoranda relating to access lines deployed in a municipality in a manner which allows for easy identification and review by the commission and, as appropriate, by the relevant municipality. The books and records for each access line count shall be maintained for a period of no less than three years.

(j) **Proprietary or confidential information.**

(1) The CTP shall file with the commission the information required by this section regardless of whether this information is confidential. For information that the CTP alleges is confidential and/or proprietary under law, the CTP shall file a complete list of the information that the CTP alleges is confidential. For each document or portion thereof claimed to be confidential, the CTP shall cite the specific provision(s) of the Texas Government Code, Chapter 552, that the CTP relies to assert that the information is exempt from public disclosure. The commission shall treat as confidential the specific information identified by the CTP as confidential until such time as a determination is made by the commission, the Attorney General, or a court of competent jurisdiction that the information is not entitled to confidential treatment.

(2) The commission shall maintain the confidentiality of the information provided by CTPs, in accordance with the Public Utility Regulatory Act (PURA) §52.207.

(3) If the CTP does not claim confidential treatment for a document or portions thereof, then the information will be treated as public information. A claim of

confidentiality by a CTP does not bind the commission to find that any information is proprietary and/or confidential under law, or alter the burden of proof on that issue.

(4) Information provided to municipalities under the Local Government Code, Chapter 283, shall be governed by existing confidentiality procedures which have been established by the commission in compliance with PURA §52.207.

(5) The commission shall notify a CTP that claims its filing as confidential of any request for such information.

(k) **Report attestation.** All filings with the commission pursuant to this section shall be in accordance with §22.71 of this title (relating to Filing of Pleadings, Documents and Other Materials) and §22.72 of this title (relating to Formal Requisites of Pleadings and Documents to Be Filed With the Commission). The filings shall be attested to by an officer or authorized representative of the CTP under whose direction the report is prepared or other official in responsible charge of the entity in accordance with §26.71(d) of this title (relating to General Procedures, Requirements and Penalties). The filings shall include a certified statement from an authorized officer or duly authorized representative of the CTP stating that the information contained in the report is true and correct to the best of the officer's or representative's knowledge and belief after inquiry.

(l) **Reporting of access lines that have been provided by means of resold services or unbundled facilities to another CTP.** This subsection applies only to a CTP reporting

access lines under §26.467 of this title, that are provided by means of resold services or unbundled facilities to another CTP who is not an end-use customer. Nothing in this subsection shall prevent a CTP reporting another CTP's access line count from charging an appropriate, tariffed administrative fee for such service.

(m) **Commission review of the definition of access line.**

(1) Pursuant to the Local Government Code §283.003, not later than September 1, 2002, the commission shall determine whether changes in technology, facilities, or competitive or market conditions justify a modification of the adoption of the definition of "access line" provided by §26.461 of this title. The commission may not begin a review authorized by this subsection before March 1, 2002.

(2) As part of the proceeding described by paragraph (1) of this subsection, and as necessary after that proceeding, the commission by rule may modify the definition of "access line" as necessary to ensure competitive neutrality and nondiscriminatory application and to maintain consistent levels of compensation, as annually increased by growth in access lines within the municipalities.

(3) After September 1, 2002, the commission, on its own motion, shall make the determination required by this subsection at least once every three years.

This agency hereby certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §26.465, relating to Methodology for Counting Access Lines and Reporting Requirements for Certificated Telecommunications Providers is hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 5th DAY OF MARCH 2003.

PUBLIC UTILITY COMMISSION OF TEXAS

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Rebecca Klein, Chairman

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Brett A. Perlman, Commissioner

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Julie Caruthers Parsley, Commissioner