PROJECT NO. 54589

RULE REVIEW OF CHAPTER 26 - SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS	**§ § § §**	**PUBLIC UTILITY COMMISSION OF TEXAS**

ORDER ADOPTING REPEALS, AMENDMENTS, AND NEW RULE IN CHAPTER 26 SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) adopts five repeals, ten amendments, and one new rule in Chapter 26 Substantive Rules Applicable to Telecommunication Service Providers as part of the statutorily required four-year rule review under Texas Government Code §2001.039. The commission also adopts corresponding revisions to commission forms.

The commission adopts the following rules with changes to the proposed text as published in the October 20, 2023 issue of the *Texas Register* (48 TexReg 6090): §§26.5, relating to Definitions, 26.30, relating to Complaints; 26.31 relating to Disclosures to Applicants and Customers; 26.34, relating to Telephone Prepaid Calling Services; 26.89, relating to Nondominant Carriers' Obligations Regarding Information on Rates and Services; 26.111, relating to Certificate of Operating Authority (COA) and Service Provider Certificate of Operating Authority (SPCOA) Criteria; 26.130, relating to Selection of Telecommunications Utilities; 26.207, relating to Form and Filing of Tariffs; new 26.208, relating to General Tariff Procedures, 26.276, relating to Unbundling; and 26.405, relating to Financial Need for Continued Support. These sections will be republished.

The commission adopts the following rules with no changes to the proposed text as published in the October 20, 2023, issue of the *Texas Register* (48 TexReg 4090): §§26.32, relating to Protection Against Unauthorized Billing Charges; 26.52, relating to Emergency Operations; 26.53, relating to Inspections and Tests; 26.54, relating to Service Objectives and Performance Benchmarks; 26.73, relating to Annual Earnings Reports; 26.79, relating to Equal Opportunity Reports; 26.80, relating to Annual Report on Historically Underutilized Businesses; 26.85, relating to Report on Workforce Diversity and other Business Practices; 26.123, relating to Caller Identification Services; 26.127, relating to Abbreviated Dialing Codes; 26.128, relating to Telephone Directories; 26.171, relating to Small Incumbent Local Exchange Company Regulatory Flexibility; 26.175, relating to Reclassification of Telecommunications Services for Electric Incumbent Local Exchange Companies (ILECs); 26.209, relating to New and Experimental Services; 26.210, relating to Promotional Rates for Local Exchange Company Services; 26.211, relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges; 26.214, relating to Long Run Incremental Cost (LRIC) Methodology for Services provided by Certain Incumbent Local Exchange Companies (ILECs); 26.215, relating to Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility (DCTU) Services; 26.217, relating to Administration of Extended Area Service (EAS) Requests; 26.221, relating to Applications to Establish or Increase Expanded Local Calling Service Surcharges; 26.224, relating to Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies; 26.272, relating to Interconnection; 26.403, relating to Texas High Cost Universal Service Plan (THCUSP); 26.404, relating to Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan; 26.407, relating to Small and Rural Incumbent Local Exchange Company Universal Service 26.409, relating to Review of Texas Universal Service Fund Support Received

by Competitive Eligible Telecommunications Providers 26.414, relating to Review of Texas Universal Service Fund Support Received by Competitive Eligible Telecommunications Providers. 26.417, relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF); 26.418, relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds; 26.419, relating to Telecommunication Resale Providers Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF) for Lifeline Service; and 26.433, relating to Roles and Responsibilities of 9-1-1 Service Providers. These sections will not be republished.

The commission adopts the repeals of 16 Texas Administrative Code (TAC) §26.55, relating to Monitoring of Service, §26.78, relating to State Agency Utility Account Information, §26.87, relating to Infrastructure Reports, and §26.142, relating to Integrated Services Digital Network, and §26.208 relating to General Tariff Procedures, with no changes to the proposed text as published in the October 20, 2023, issue of the *Texas Register* (48 TexReg 6090). These sections will not be republished.

Definitions

Adopted §26.5 revises definition of “public service answering point (PSAP),” under §26.5(191), to include an emergency communications center.

Customer Complaints

Adopted §26.30 and §26.32 change the deadline for, as applicable, a Certificated Telecommunications Utility (CTU), billing telecommunications utility, a billing agent, or a service provider to respond to complaints submitted to the commission from 21 days to 15 days. This change aligns with recent changes to customer protection rules in project number 52796.

Consumer Protection Division Contact E-mail Address and Title

Sections 26.30(a)(2)(B)(iii)(IV), 26.31(b)(4)(C)(x), 26.34(f)(3), 26.130(g)(3) and (i)(4), as proposed, are amended to update "consumer@puc.texas.gov" as the contact e-mail for the commission's Consumer Protection Division. Sections 26.208(c)(2)(E) and 26.276(g)(1), as proposed, are amended to update the reference from "Office of Customer Protection" to "Consumer Protection Division."

Emergency Operations

Adopted §26.52 requires dominant certificated telecommunications utilities (DCTUs) to comply with the backup power obligations associated with fiber optic cables that are prescribed by federal law or other applicable regulations, including the requirements of 47 Code of Federal Regulations § 9.20.

Inspections and Tests

Adopted §26.53, revises the requirement for DCTUs to report to the commission the numbers assigned for dial test terminations. Specifically, such numbers would only have to be provided by the DCTU if requested by the commission.

Service Objectives and Performance Benchmarks

Adopted §26.54 deletes requirements related to one-party line service and voice band data under subsection (b).

Annual Report on Historically Underutilized Businesses

Adopted §26.80, expands the list of providers to which the section does not apply to include any company that holds a certificate of operating authority (COA), a company that holds a service provider certificate of operating authority (SPCOA) and a registered interexchange carrier (IXC).

Report on Workforce Diversity and other Business Practices

Adopted §26.85 expands the list of providers to which the section does not apply to include any company that holds a COA, a company that holds a SPCOA and a registered IXC.

COA and SPCOA Criteria

Amended §26.111 revises subsection (i)(4) to require applicants to file SPCOA amendment applications with the Commission on State Emergency Communications (CSEC) via electronic mail within five working days from the date the amendment was filed. The change to subsection (i)(4) would require applicants to provide notice of the SPCOA amendment applications to all affected 9-1-1 administrative entities in the manner provided by paragraph (3)(A)-(D). Additionally, subsection (m)(2) is revised to require a COA or SPCOA holder that intends to cease operations to provide a copy of its application to cease operations and relinquish its certificate to CSEC. The commission also adopts minor and conforming changes to the commission prescribed SPCOA application form. Section 26.111(d), as proposed, is amended to include the term “or

entity" where necessary for consistency with §26.111(a) and other provisions in the rule. Section 26.111(g)(3), as proposed, is amended to strike the term "initial" to make clear that the requirements under §26.111(g)(3)(A)-(D) apply to tariff amendment applications as well as new tariff applications, which is reflective of historical commission practice and for consistency with language in §26.111(g) requiring ongoing adherence to the requirements prescribed by that subsection. Section 26.111(i)(1)(C) was inadvertently omitted from the published rule and is re-inserted. Section 26.111(i)(1)(E)(i), as proposed, is revised to correctly reflect that the requirements for the discontinuation of optional services do not apply to a deregulated company holding a COA or to an exempt carrier.

9-1-1 administrative entities

The reference to "9-1-1 entity" in proposed §26.111(i)(4) and §26.272(e)(1)(B)(vi)(I) to is corrected to refer to "9-1-1 administrative entity." Amended §26.433 corrects the reference to "9-1-1 administrative entity" in subsection (i)(1).

Capitol Complex Telephone System Directory

Adopted §26.128 replaces the term State of Texas Telephone Directory with Capitol Complex Telephone System Directory in subsection (b)(1) and (2) and deletes the requirement under subsection (e)(5) for telephone directories published by certain telecommunications utilities or its affiliates to include sample long distance rates.

House Bill (HB) 1597 Implementation

HB 1597, adopted by the 88th Texas Legislature (R.S.), amends the requirements associated with filing a telecommunications tariff with the commission under PURA §52.251. Specifically, HB 1597 authorizes an affiliate or trade association to, on behalf of a public utility, file a tariff for telecommunications service with the commission. HB 1597 also provides that a tariff is considered approved if the commission does not approve or deny the tariff or request supplemental information from the filer within 60 days from the date the tariff was filed. Lastly, HB 1597 requires the filer to provide supplemental information to the commission within 15 days from the request and provides that a tariff is considered approved if the commission does not approve or deny the tariff within 30 days from the date the commission receives the supplemental information.

To implement HB 1597, the commission repeals and replaces §26.208 and adopts §§26.89, 26.207, 26.209, 26.210, and 26.211. Section 26.89(a)(3), as proposed, is further revised to authorize commission substantive rule citations applicable to a tariff to be included as a cover letter.

New §26.208 aligns the general requirements of PURA §52.251, as amended by HB 1597, with the more specific requirements of PURA Chapter 53, Subchapter C (§§53.101-53.113) when a tariff involves a rate change. New §26.208 also clarifies the requirements for tariff applications, including those related to effective dates and notice to affected persons, and more clearly describes the process for commission review of such applications. To conform with the abridged timeline for commission review and approval imposed by HB 1597, new §26.208 prohibits a tariff application from being docketed, unless the application involves a new tariff or a rate change under PURA Chapter 53, Subchapter C. Sections 26.209, 26.210, and 26.211 are adopted to remove

references to docketing of an application filed under those provisions. New §26.208(b), as proposed, is amended by deleting §26.208(b)(1) and renumbering and retitling §26.208(b)(2) and (3) accordingly, revising the provisions for notice to municipalities and by newspaper to only apply to major rate changes, and authorizing an applicant to request a waiver to notice requirements for administrative or clerical tariff amendments, as determined by the presiding officer. New §26.208(c)(1)(C), as proposed, is also amended to further limit the prohibition on electronic notice only to applications involving a "major" rate change, or if otherwise required by the presiding officer. Additionally, §26.209 and §26.210 are adopted to more clearly indicate that a tariff to which §26.209 or §26.210 apply may be filed in accordance with §26.208. Similarly, §26.207 is amended to reference §§26.208, 26.209, and 26.211 more clearly. Section 26.211 is amended to clarify that an informational notice filing in accordance with §26.227, relating to Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58 Electing Companies, suffices for compliance provided that the notice complies with §26.228, relating to Requirements Applicable to Pricing Flexibility for Chapter 58 Electing Companies or §26.229, relating to Requirements Applicable to Chapter 52 Companies, as applicable. Section 26.207(d)(1)(A),as proposed, is further revised to authorize commission substantive rule citations applicable to a tariff to be included as a cover letter. Lastly, amended §26.89 and §26.207, and adopted §§26.209, 26.210, and 26.211 more clearly reflect the statutory language of PURA §52.251.

Senate Bill (SB) 1425 and SB 1710 Implementation

SB 1425, adopted by the 88th Legislature, amends PURA §56.032 to require small ILECs seeking adjustments from the Small and Rural Plan to, every calendar year, publicly file with the commission operational information concerning the small ILEC's operations that are regulated by the commission. The commission adopts §26.407 to implement HB 1425. The commission also amends the commission prescribed form for the annual report and accompanying schedules used by small ILECs, as well as the associated instructions.

SB 1710 adopted by the 88th Legislature, amends PURA §56.023 to implement revisions to support levels received by eligible telecommunications providers under the High Cost Plan or Small and Rural Plan of the Texas Universal Service Fund (TUSF). SB 1710 also revises eligibility criteria for receipt of support from the TUSF and requires the commission to periodically review such criteria. Lastly, SB 1710 adds provisions for expiration and relinquishment of support from the TUSF. Section 26.405(d)(2)(B), as proposed, is further amended to omit the reference to "Version 7" of the National Broadband Map and instead refer to the version of the map in effect for at least 90 days.

The commission also adopts §26.409 by setting an expiration date for the provision of December 31, 2023, consistent with the requirements of PURA §56.023(s).

Comments

The commission received comments from Texas Cable Association, Texas Telephone Association, Verizon, and Windstream.

The comments received in this project were in response to a proposal for publication that was published in the *Texas Register* to provided formal notice of a rulemaking proceeding and were in response to a notice of the commission's chapter 26 rule review. Under Tex. Gov't Code, Chapter 2001, the commission may only adopt substantive amendments that address issues that were noticed in the commission's proposal for publication. Comments requesting amendments beyond the scope of the issues addressed in the proposal for publication are not being considered for implementation in this rulemaking proceeding but may be considered in a future rulemaking proceeding. This will ensure that all interested parties have an opportunity to comment on the proposed changes.

Consumer Protection Division Contact E-mail Address

Sections 26.30(a)(2)(B)(iii)(IV), 26.31(b)(4)(C)(x), 26.34(f)(3), 26.130(g)(3) and (i)(4) respectively refer to the e-mail address of the commission's Consumer Protection Division in the context of certain customer complaint rules.

Commission Response

The commission revises the reference to the e-mail address of the commission's Consumer Protection Division in these provisions from "customer@puc.texas.gov" to correctly refer to "consumer@puc.texas.gov."

Section 26.111(a) and (d) – Applicability and certification

Existing §26.111(a) establishes that the section applies to the certification of a person or entity to provide certain telecommunications services as holders of COAs and SPCOAs under PURA

Chapter 54, Subchapters C and D. Proposed §26.111(d) adds language that prohibits a person from providing the services listed under §26.111(a) unless the person obtains a certificate of convenience and necessity, COA, or SPCOA in accordance with the requirements of §26.111.

TCA recommended that the prohibition added to §26.111(d) be deleted because it is unnecessary, ambiguous, and would impose costs with no commensurate benefit to the public. TCA argued that §26.111(a) should instead be amended to state that no provision in §26.111 prohibits the granting of a COA or SPCOA to entities that intend to utilize Voice over Internet Protocol (VoIP) or other advanced technologies but do not provide local exchange telephone service, basic local telecommunications service, or switched access service. TCA stated that its recommended change would better reflect the commission's holdings in *Daemon Systems* (Docket No. 52765), *Earthgrid* (Docket No. 53076), and *Nexstream* (Docket No. 52359). In these cases, TCA asserted, parties argued that the commission may only grant an SPCOA to an entity if it would be providing local exchange telephone service, basic local telecommunications, or switched access service. The commission rejected those arguments. Moreover, TCA stated that its recommended change would provide clarity and certainty to the telecommunications industry. TCA stated that such a change is reflective of the legislative intent of SB 2399 (88R), which would have expressly authorized the commission to grant a certificate to a VoIP provider. TCA provided redlines consistent with its recommendation.

Commission Response

The commission declines to amend §26.111(a) and (d) in the manner TCA recommends. Section 26.211(d) restates a prohibition under PURA §54.001, making TCA's proposed edits

to §26.211(a) and (d) unnecessary.

The applicants in the cited cases both offered telecommunications-related services, such as VoIP (*Daemon Systems* and *Nexstream*), and optical service via fiber cable (*Earthgrid*). The holdings of those cases were intended to provide the commission discretion in reviewing applications for certification by stating that existing law does not *prohibit* certification despite the applicant not providing basic telephone service or even a telecommunications-related service. However, codification of the holdings of those cases in §26.111, as TCA recommends, may result in future applicants arguing that they cannot be *denied* certification despite not providing basic local telephone service or a telecommunications-related service. Accordingly, under the adopted rule, the commission retains the discretion to review each application for certification on a case-by-case basis.

The commission does not agree with TCA that the existence of SB 2399 is a persuasive basis for amending the rule because SB 2399 was not enacted into law.

The commission also modifies §26.111(d) to add the term "or entity" where appropriate for consistency with §26.211(a) and other provisions in the rule.

Section 26.111(i)(1)(A) – COA or SPCOA name change amendments

Section 26.111(i)(1)(A) establishes the process for a certificate holder to change its corporate or assumed name and requires a certificate holder to be in compliance with commission rules before they can change its corporate or assumed name.

Verizon recommended eliminating the requirement that a COA or SPCOA holder be in compliance with commission rules before name change requests are administratively granted. Verizon found this requirement overly burdensome, unnecessary, and wasteful, particularly for national carriers with multiple affiliates. Verizon recommended that the provision be revised so that carrier name changes are eligible for administrative disposition and be limited only to ensure the change does not lead to customer confusion. Verizon reasoned that the application form for a name change requires an applicant to provide five years of complaint history for itself and each of its affiliates, and to list the number of customers in each state, information which has no bearing on whether a name change should be permitted. Verizon provided redlines consistent with its recommendation.

Commission Response

The commission declines to revise §26.111(i)(1)(A) as proposed by Verizon. Name change amendments are eligible for administrative approval under §26.111(i)(1)(A)(i) and requiring compliance with commission rules before allowing a corporate name change ensures that the name change complies with the applicable customer protection rules. Additionally, providing complaint history to the commission is necessary to ensure ongoing compliance with commission rules, even for a name change, and is a standard requirement for other commission registrations such as §25.107(e)(2)(D), relating to Certification and Obligations of Retail Electric Providers (REPs), 25.111(f)(1)(Q), relating to Registration of Aggregators, and for affiliates under §25.84(g), relating to Annual Reporting of Affiliate Transactions for Electric Utilities. Furthermore, §26.111(g)(3)(A)(ii) substantially addresses Verizon's concerns. Specifically, the provision authorizes an applicant to request to limit the inclusion of complaint history, disciplinary records, and compliance records if it would be unduly

burdensome to provide. The commission instead amends §26.111(g)(3) to strike the term "initial" as the application form has historically applied to both new SPCOA applications and amendments. Specifically, the revision makes clear that an applicant seeking an amendment to a SPCOA certificate is authorized to request to limit the inclusion of complaint history, disciplinary records, and compliance records if it would be unduly burdensome to provide. This change harmonizes the provision with historical commission practice and the requirements listed in the commission-prescribed application form and aligns the provision with §26.111(g) which requires ongoing adherence to the technical and managerial requirements prescribed under that subsection.

Section 26.111(i)(1)(C), (2), and (3) – Sale or transfer of certificate; acquisition or merger of certificate holder

Section 26.111(i)(1)(C) establishes the process and requirements for certificate holder to sell, transfer, assign, or lease a controlling interest in its COA or SPCOA or sell, transfer or lease a controlling interest in the entity holding the COA or the SPCOA. Section 26.111(i)(2) authorizes abbreviated amendment applications for corporate restructuring or internal change in ownership or controlling interest. Section 26.111(i)(3) requires notice to be filed with the commission if a certificate holder acquires or merges with another certificate holder, other than a CCN holder, and further requires a full amendment application to be filed if commission staff determines that it is necessary.

Verizon recommended that §26.111(i)(1)(C), (2), and (3) be revised to ensure the rule is consistent with the commission's authority regarding telecommunications carrier transactions. Verizon

stated that the commission's authority to regulate stock sales, mergers, and asset and ownership transactions of public utilities is codified at PURA §14.101-103, and these sections apply only to public utilities, not to COA or SPCOA holders. Verizon also noted that PURA §51.010 specifically excludes COA and SPCOA holders from the provisions of PURA §14.101. For these reasons, Verizon concluded that the commission lacks authority to regulate stock sales, mergers, and acquisitions of COA and SPCOA holders. Specifically, the commission should only require SPCOA or COA holders to notify the commission of a sale, transfer, or merger of at least 50% of the company within 30 days after closing, without the need for commission approval. Verizon further recommended that the commission exempt COA and SPCOA holders from the requirement to file an application for such transactions. Verizon provided redlines consistent with its recommendation.

Commission Response

The commission disagrees with Verizon because commission review of such transactions by certificate holders is authorized under PURA §§54.103, 54.152-155, and 54.255 to ensure the company acquiring the certificate is eligible and can provide adequate service. Accordingly, the commission declines to revise §26.111(i)(1)(C), (2), or (3) because commission review of transactions involving the controlling interest of a certificate is substantively different from the process detailed in PURA §14.101. Commission review of transactions under §26.111 is limited to an analysis of eligibility and capability to provide service to ensure that the parties to the transaction comply with commission rules and otherwise are qualified to conduct the sale. In contrast, PURA §14.101 requires detailed reporting of certain transactions and authorizes commission investigation to determine whether the transaction is equitable and

in the public interest, and to "disallow the effect of the transaction if the transaction will unreasonably affect rates or service."

Section 26.111(i)(1)(C) was inadvertently omitted from the rule and is re-inserted.

Section 26.111(i)(1)(E)(i) – Discontinuation of optional service

Section 26.111(i)(1)(E)(i) establishes the process for a deregulated company holding a COA or an exempt carrier to discontinue service and relinquish its certificate, or to discontinue an optional service.

Verizon recommended that the commission clarify the process for discontinuing optional services under §26.111(i)(1)(E)(i). Specifically, Verizon recommended that the provision be amended to clearly state that a deregulated company holding a COA or an exempt carrier is not required to provide the information that would ordinarily be required when discontinuing optional services.

Commission Response

The commission agrees with Verizon that a deregulated company holding a COA or an exempt carrier is not required to provide the information that would ordinarily be required when discontinuing optional services and amends the rule accordingly.

Section 26.111(i)(4) – Notice to CSEC and 9-1-1 administrative entities

Section 26.111(i)(4) requires an applicant to provide a copy of the COA or SPCOA application or amendment notice to CSEC and provide notice to all affected 9-1-1 administrative entities of the

application or amendment.

TCA recommended that §26.111(i)(4) be amended to require the commission to maintain a complete contact list with email addresses for 9-1-1 administrative entities on the commission's website.

Commission Response

The commission declines to amend §26.111(i)(4) to require the commission to maintain a complete contact list of 9-1-1 administrative entities on its website. A map and contact list of 9-1-1 administrative entities are available on CSEC's website. A contact list maintained by the commission would be both duplicative and susceptible to becoming out of date, because the commission is not the agency tasked with maintaining such information.

Section 26.111(l)(5)(B) – Copy of most recent tariff in certification amendment

Section 26.111(l)(5)(B) requires an amendment for certification to include a copy of the applicant's most recent commission-approved tariff.

TCA recommended inserting language to §26.111(l)(5)(B) that would exempt COA and SPCOA holders from the requirement to file tariffs.

Commission Response

The commission declines to amend the rule as recommended by TCA because it is unnecessary. Section 26.111(l)(5)(B)(ii) exempts entities subject to §26.89, which applies to

nondominant carriers, from the tariff filing requirement.

Section 26.89(a)(3) and §26.207(d)(1)(A) – Inclusion of rules applicable to each tariff

Sections 26.89(a)(3) and 26.207(d)(1)(A) require a tariff to include each rule that relates to or affects a rate of, or a utility service, product, or commodity furnished by, a nondominant carrier or utility.

TTA recommended the requirement for rule references be deleted from §26.89(a)(3) and §26.207(d)(1)(A). TTA commented that if the commission repealed or renumbered a rule, each tariff subject to the requirement would have to be revised and each company would consequently have to re-file its tariff. TTA further noted that, some tariff pages may require numerous different rule references depending on the level of detail that would be required. TTA recommended the rule references be included in the cover letter used to file a tariff with the commission. TTA provided draft language consistent with its recommendation.

Commission Response

The commission agrees with TTA's recommendation and modifies the proposed language to clarify such information is to be provided a cover letter.

Section 26.208(b)(1) – Filing of a new DCTU tariff and application for certification

Section 26.208(b)(1) requires an application to file a new DCTU tariff prior to or concurrently with an application for certification and otherwise meet the requirements of §26.208(b)(2)(A) and (B).

Commission Response

The commission modifies the provision for clarity. There is no statutory requirement for a tariff to be filed prior to or concurrently with an application for certification. Further, the requirement to file a tariff with an amendment for certification is already covered by §26.111(l)(5)(B).

Section 26.208(b)(2)-(3) and (c)(1)(C) – Notice for tariff amendments involving a rate change

Section 26.208(b)(2) prescribes the requirements, including notice, for a tariff amendment involving a rate change, including a major rate change. Section 26.208(b)(3) prescribes the requirements, including notice, for other DCTU tariff amendments that do not involve a rate change. Sections §26.208(b)(2)(B) and §26.208(b)(3)(B) both require notice to be provided to affected persons, including each municipality and customer affected by the change, for tariff amendments involving a rate change and other tariff amendments, respectively. Section 26.208(c)(1)(C) authorizes notice for tariff applications to be provided electronically unless otherwise required by the presiding officer or if the application involves a major rate change. Section 26.208(c)(1)(C) also establishes the process for notice if the application involves a major rate change.

TTA recommended the newspaper and municipality notice requirements in proposed §26.208(b)(2) and (3) be revised to only apply to tariff amendments involving major rate change. Specifically, TTA recommended revising §26.208(b)(2) to state the provision only applies to a "major" rate change, with the effect of changing the applicability of the notice requirement under §26.208(b)(2)(B). Similarly, TTA recommended revising §26.208(b)(3) to apply to "non-major

rate changes" in addition to other tariff amendments, and also revising §26.208(b)(3)(B) to remove the requirement to provide notice to municipalities and customers affected by the change. Lastly, TTA recommended the prohibition on electronic notice for tariff applications in §26.208(c)(1)(C), if required by the presiding officer or for applications involving a rate change, be further limited to only applications involving a "major" rate change. TTA commented that PURA §53.103(c) authorizes the commission to waive notice requirements for tariff changes in certain circumstances. TTA explained it has been the commission's historical practice to require publication only for major rate change tariff applications, but only require notice to OPUC for non-major rate changes. TTA provided draft language consistent with its recommendation.

Commission Response

The commission agrees with TTA's recommendation and modifies the cited provisions accordingly.

Section 26.208(b)(3)(B) – Notice to affected persons of other DCTU tariff amendments

Section 26.208(b)(3)(B) requires a DCTU to provide notice to affected persons, including each municipality affected by the change, in the manner prescribed by §26.208(c) or as otherwise required by the presiding officer.

TTA recommended §26.208(b)(3)(B) be revised to allow an applicant to request a waiver of the notice requirement for non-major rate change tariffs, for good cause. Specifically, TTA recommended the good cause exception be available when tariff amendments are administrative

or clerical and, therefore, have minimal or no impact on the public. TTA provided draft language consistent with its recommendation.

Commission Response

The commission agrees with TTA's recommendation and modifies the rule accordingly.

Section 26.208(e)(1)(A) – Effective date of tariff

Section 26.208(e)(1)(A) requires the effective date of an applicant's tariff to be no earlier than 35 days after the date a sufficient application is approved by the presiding officer.

TTA recommended language in §26.208(e)(1) that requires the effective date of tariffs to be "no earlier than 35 days after the date a sufficient application is approved by the presiding officer" be deleted as it is not supported by HB 1597. Alternatively, TTA recommended a separate rulemaking be initiated on this policy alone. TTA remarked that this is a change in the commission precedent of establishing the default effective date for tariffs to be 35 days from the date of filing. TTA commented that this change is unnecessary and referenced existing §26.207[(g)]. TTA further commented that the default tariff effective date of 35 days after filing has provided consistency to companies and that the change "reverses the presumption of approval" and "empowers [c]ommission [s]taff to effectively delay the effective date of every routine tariff indefinitely." TTA recommended that this change be deleted from the rule or, alternatively, if the commission's objective is to implement this change, to initiate a separate rulemaking on this policy alone. TTA provided draft language consistent with its recommendation.

Commission Response

The commission rejects TTA's recommended change to §26.208(e)(1)(A) and suggestion to initiate a separate rulemaking on this issue. The change of the effective date of a tariff from the date of filing to the date of approval by the presiding officer is necessary to implement the timeline required by HB 1597. The extension of the proposed effective date under §26.111(e)(4) is limited only to tariff applications that involve a rate change. Requirements for tariff proceedings under PURA §52.251, as amended by HB 1597, must be read *in pari materia* with the specific requirements under PURA Chapter 53, Subchapter C. Likewise, the specific grant of statutory authority under PURA Chapter 53, Subchapter C prevails over the more general grant in PURA §52.251. This is further reflected in §26.208(f)(4) which curtails the circumstances in which a tariff application may be docketed and §26.208(h) which contemplates the procedures for docketing a tariff application involving a rate change. Furthermore, TTA's citation to §26.207(i) no longer exists, as that provision has been merged with what is now §26.111(e)(4). PURA §53.102 states, "[A] utility may not change its rates unless the utility files a statement of its intent with the commission *at least* 35 days before the effective date of the proposed change" which does not conflict with §26.208(e)(1)(A). Accordingly, the change regarding the effective date of the tariff is not inconsistent with existing law. A presumption of approval has never existed in §26.208, nor does the provision authorize commission staff to indefinitely delay a proposed tariff. As ever, the determination on the sufficiency of a tariff will be made by the presiding officer upon considering staff's recommendation. In any event, §26.208(e)(2) authorizes the presiding officer to approve an earlier effective date for good cause shown by an applicant.

Section 26.405(d)(2)(B) – TTA and Windstream

Section 26.405(d)(2)(B) prescribes the process the commission will use to determine the census blocks served by an unsubsidized wireline voice provider competitor within a specific exchange using the current version of the National Broadband Map.

TTA and Windstream recommended the reference to the National Broadband Map in §26.405(d)(2)(B) be revised to omit the reference to "Version 7" of the map and instead insert language requiring use of the version of the map that has been in effect for at least 90 days. TTA explained that the proposed language presents a timing issue when considering newly revised data from the map and application submission before the deadline. TTA provided draft language consistent with its recommendation. Windstream noted if the recommended change were not accepted, it would make filing a complete and accurate application on or before December 31, 2023 "nearly impossible" for providers.

Commission Response

The commission agrees with TTA and Windstream's recommendation and modifies the cited provision.

The amendments, repeals, and new rule are adopted generally under PURA §14.002, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §52.001(b)(1) which requires that commission rules, policies and principles be formulated and applied to protect the public interest; and PURA

§52.002 which grants the commission exclusive original jurisdiction over the business and property of a telecommunications utility in the State of Texas.

Cross reference to statutes: Public Utility Regulatory Act §§14.002; 12.252, 14.052, 15.021-15.0233, 15.051, 16.051, 17.001, 17.003,17.004, 17.052(3), 17.102, 17.151-17.158, 51.001(g), 51.004, 52.001(b)(1), 52.002, 52.007, 52.051, 52.053, 52.054, 52.058, 52.0583(b), 52.0584, 52.059, 52.154, 52.207, 52.251, 52.256, 53.101-53.113, 54.101-54.105, 54.151-54.159, 54.251, 54.259, 54.260, 54.261, 55.001, 55.002, 55.008, 55.015, 55.024, 55.201-55.204, 55.253, 55.301-55.308, 56.001, 56.002, 56.023, 56.024, 56.032, 56.156, 58.024, 58.051, 58.051-58.063,58.061, 59.024, 60.021, 60.022, 60.023, 60.122, 60.124, 60.125, 64.001, 64.004, 64.051, 64.052, 64.053, 64.101-64.102, 64.151-64.158, 65.002, 65.004, 65.102; Texas Business and Commerce Code §304.055; and Texas Government Code §2001.039.

§26.5. Definitions.

The following words and terms, when used in this chapter have the following meanings, unless the context indicates otherwise:

(1)-(190) (No change.)

(191) **Public safety answering point (PSAP)** -- A continuously operated communications facility established or authorized by local government 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. The term includes an emergency communications center.

(192)-(289) (No change.)

§26.30. Complaints.

(a) **Complaints to a certificated telecommunications utility (CTU).** A customer or applicant for a service may submit a complaint to a CTU either in person, by letter, telephone, or by any other means determined by the CTU. For purposes of this section, a complainant is a customer or applicant for a service that has submitted a complaint to a CTU or to the commission.

(1) **Initial investigation.** The CTU must investigate the complaint and advise the complainant of the results of the investigation within 21 days of receipt of the complaint. A CTU must inform customers of the right to receive these results in writing.

(2) **Supervisory review by the CTU.** If a complainant is not satisfied with the initial response to the complaint, the complainant may request a supervisory review by the CTU.

(A) A CTU supervisor must conduct the supervisory review and inform the complainant of the results of the review within ten days of receipt of the complainant's request for a review. A CTU must inform customers of the right to receive these results in writing.

(B) A complainant who is dissatisfied with a CTU's supervisory review must be informed of:

(i) the right to file a complaint with the commission;

(ii) the commission's informal complaint resolution process;

(iii) the following contact information for the commission:

(I) Mailing Address: PUCT, Consumer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326;

(II) Phone Number: (512) 936-7120 or in Texas (toll-free) 1-888-782-8477;

(III) FAX: (512) 936-7003;

(IV) E-mail address: consumer@puc.texas.gov;

(V) Internet address: http.//www.puc.texas.gov;

(VI) Relay Texas (toll-free): 1-800-735-2989.

(b) **Complaints to the commission.** The commission may only review a complaint of a retail or wholesale customer against a deregulated company or exempt carrier that is within the scope of the commission's authority provided in Public Utility Regulatory Act (PURA) §65.102.

(1) **Informal complaints.**

(A) The complaint to the commission should include:

(i) The complainant's name, address, and telephone number.

(ii) The name of the CTU or subsidiary company against which the complaint is being made.

(iii) The customer's account or phone number.

(iv) An explanation of the facts relevant to the complaint.

(v) Any other information or documentation which supports the complaint.

(B) Upon receipt of a complaint from the commission, a CTU must investigate and advise the commission in writing of the results of its investigation within 15 days of the date the complaint was forwarded by the commission.

(C) The commission will:

(i) review the CTU's investigative results;

(ii) determine a resolution for the complaint; and

(iii) notify the complainant and the CTU in writing of the resolution.

(D) While any informal complaint process is ongoing at the commission:

(i) basic local telecommunications service must not be suspended or disconnected for the nonpayment of disputed charges; and

(ii) a customer is obligated to pay any undisputed portion of the bill.

(E) The CTU must keep a record of any informal complaint forwarded to it by the commission for two years after the determination of that complaint.

(i) This record must show the name and address of the complainant, and the date, nature, and adjustment or disposition of the complaint.

(ii) A CTU is not required to keep records of protests regarding commission-approved rates or charges that require no further action by the CTU.

(2) **Formal complaints.** If the complainant is not satisfied with the results of the informal complaint process, the complainant may file a formal complaint with the commission. This process may include the formal docketing of the complaint as provided by §22.242 of this title (relating to Complaints).

§26.31. Disclosures to Applicants and Customers.

(a) **Application.** Subsection (b)(4)(C)(viii) of this section does not apply to a deregulated company holding a certificate of operating authority, or to an exempt carrier that meets the criteria of Public Utility Regulatory Act (PURA) §52.154.

(b) **Certificated telecommunications utilities (CTU).** The disclosure requirements of this subsection only apply to residential customers and business customers with five or fewer customer access lines.

(1) **Promotional requirements.** Promotions, including advertising and marketing, conducted by a CTU must comply with the following:

(A) If any portion of a promotion is translated into another language, then all portions of the promotion must be translated into that language. Promotions containing a single informational line or sentence in another language to advise a person on how to obtain the same promotional information in a different language are exempt from this requirement.

(B) Promotions must not be fraudulent, unfair, misleading, deceptive, or anti-competitive as prohibited by federal and state law.

(2) **Prior to acceptance of service.** A CTU must provide the following information to an applicant before the applicant accepts service:

(A) notice that the customer will receive the information packet described in paragraphs (3) and (4) of this subsection;

(B) an explanation of each product or service being offered;

(C) a description of how each charge will appear on the telephone bill;

(D) any applicable minimum contract service terms;

(E) disclosure of all money that must be paid prior to installation of a new service or transfer of an existing service to a new location, and whether the money is refundable;

(F) disclosure of construction charges in accordance with §26.22 of this title (relating to Request for Service);

(G) information about any necessary change in the applicant's telephone number;

(H) disclosure of the company's cancellation policy; and

(I) information on whom to call and a working toll-free number for customer inquiries.

(3) **Terms and conditions of service.** A CTU must provide information regarding terms and conditions of service to customers in writing and free of charge at the initiation of service. Upon request, a customer is entitled to receive an additional copy of the terms and conditions of service free of charge from the CTU every calendar year. Any contract offered by a CTU must include the terms and conditions of service. A CTU is prohibited from offering a customer a contract or terms and conditions of service that waives the customer's rights under federal or state law, or commission rule.

(A) The information must be:

(i) sent to the new customer before payment for a full bill is due;

(ii) clearly labeled to indicate it contains the terms and conditions of service;
(iii) provided in a readable format written in plain, non-technical language; and
(iv) provided in the same language in which the CTU markets the service.

(B) The following information must be included:
(i) each rate and charge as it will appear on the telephone bill;
(ii) an itemization of each charge that may be imposed on the customer, including charges for late payments and returned checks;
(iii) a full description of each product or service to which the customer has subscribed;
(iv) any applicable minimum contract service terms and fees for cancellation or early termination;
(v) all money that must be paid prior to installation of new service or transfer of existing service to a new location and whether the money is refundable;
(vi) applicable construction charges in accordance with §26.22 of this title;
(vii) any necessary change in the applicant's telephone number;
(viii) the company's cancellation or early termination policy;
(ix) an operational toll-free number for customer service; and
(x) the provider's legal business name used for providing telecommunications services in the state.

(4) **Customer rights.** At the initiation of service, a CTU must provide to a customer information regarding customer rights in writing and free of charge.

(A) The informational disclosures relating to customer protections required by subparagraph (C) of this paragraph must be:
(i) sent to the new customer before payment for a full bill is due;
(ii) clearly labeled to indicate the customer protection disclosures contain information regarding customer rights;
(iii) provided in a readable format and written in plain, non-technical language; and
(iv) provided in the same language in which the CTU markets the service.

(B) The CTU must also provide:
(i) the information in subparagraph (C) of this paragraph to each customer at least every other year at no charge; or
(ii) a printed statement on the bill or a billing insert identifying where the information in subparagraph (C) of this paragraph can be obtained. The statement must be provided to each customer every six months.

(C) The following informational disclosures relating to customer protections must be provided by the CTU:
(i) the CTU's customer credit requirements and the circumstances under which a customer deposit or an additional deposit may be

required, the manner in which a deposit and interest paid on deposits are calculated, the time frame and requirements for return of the deposit to the customer, and any other terms and conditions related to deposits;

(ii) the time period for payment of outstanding bills without incurring a penalty and the amount and conditions under which a penalty may be applied to delinquent bills;

(iii) the grounds for suspension or disconnection of service;

(iv) the requirements a CTU must meet to suspend or disconnect service;

(v) the requirements a CTU must meet for resolving billing disputes and how disputes affect suspension or disconnection of service;

(vi) information on alternative payment plans offered by the CTU, including payment arrangements and deferred payment plans. A CTU must provide to each customer a statement that the customer has the right to request these alternative payment plans;

(vii) the requirements to have the customer's service restored or reconnected after involuntary suspension or disconnection;

(viii) a customer's right to continue local service as long as full payment for local service is timely made;

(ix) information regarding protections against unauthorized billing charges ("cramming") and selection of telecommunications utilities ("slamming") as required by §26.32 of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming")) and §26.130 of this title (relating to Selection of Telecommunications Utilities), respectively;

(x) the customer's right to file a complaint with the CTU, the procedures for a supervisory review, and the customer's right to file a complaint with the commission regarding any matter concerning the CTU's service. The commission's contact information: PUCT, Consumer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or in Texas (toll-free) 1-888-782-8477, e-mail address: consumer@puc.texas.gov, Internet address: www.puc.texas.gov, and Relay Texas (toll-free) 1-800-735-2989, must accompany this information;

(xi) the hours, addresses, and telephone numbers of each CTU office where bills may be paid and customer service information may be obtained, or a toll-free number at which the customer may obtain such information;

(xii) a toll-free telephone number or equivalent, such as the use of wide area telephone service or acceptance of collect calls, that a customer may call to report service problems or make billing inquiries;

(xiii) a statement that each CTU service is provided without discrimination as to a customer's race, color, sex, nationality, religion, marital status, income level, source of income, or from unreasonable discrimination on the basis of geographic location;

(xiv) a summary of the company's policy regarding the provision of credit history based upon the credit history of a customer's former spouse;

(xv) notice of any special services such as readers or notices in Braille, if available, the phone number for Relay Texas: 1-800-735-2989, and any teletypewriter or text telephone service offered by the CTU;

(xvi) how a customer with a physical disability, and those who care for them, can identify themselves to the CTU so that special action can be taken to appropriately inform these persons of their rights; and

(xvii) if a CTU is offering Lifeline Service in accordance with §26.412 (relating to Lifeline Service Program), how information about customers who qualify for Lifeline Service may be shared between each relevant state agency and the customer's phone service provider.

(5) **Notice of changes.** A CTU must provide each customer written notice between 30 and 60 calendar days in advance of a material change in the terms and conditions of service or customer rights and must give each customer the option to decline any material change in the terms and conditions of service and cancel service without penalty due to the material change in the terms and conditions of service. This paragraph does not apply to changes that are beneficial to the customer such as a price decrease or changes required by law.

(6) **Right of cancellation.**

(A) A CTU must provide each residential applicant and customer the right of rescission in accordance with applicable law.

(B) If a residential applicant or customer enrolls in a contract with a minimum duration exceeding 31 days, a CTU must promptly provide the applicant or customer with the terms and conditions of service after the applicant or customer has provided authorization to CTU. The CTU must offer the applicant or customer a right to cancel the contract without penalty or fee for a period of six working days after the terms and conditions of service are mailed or sent electronically to the applicant or customer.

(c) **Dominant certificated telecommunications utility (DCTU).** In addition to the requirements of subsection (b) of this section, the following requirements apply to residential customers and business customers with five or fewer customer access lines.

(1) **Prior to acceptance of service.** Before an applicant signs a contract for service, or a DCTU accepts any money for new residential service or transfers a customer's existing residential service to a new location, the DCTU must provide to each applicant the following:

(A) information relating to the DCTU's residential service alternatives, beginning with the lowest-priced option, and the range of service offerings available within the applicant's service area with full consideration to the cost associated with applicable equipment options and installation charges; and

(B) a statement written in plain English or Spanish that clearly informs the applicant about the availability of Lifeline Service.

(2) Customer rights.

(A) If a DCTU provides the same information as required by subsection (b)(4)(C) of this section in the telephone directories provided to each customer in accordance with §26.128 of this title (relating to Telephone Directories), the DCTU must provide a printed statement on each customer's bill or a billing insert identifying the location of the information within the telephone directory. The statement or billing insert must be provided to customers at least every six months.

(B) The information required by subsection (b)(4)(C) of this section and this subsection must be provided in plain English and Spanish; however, a DCTU is exempt from the Spanish language requirement if 10% or fewer of its customers are exclusively Spanish-speaking. If the DCTU is exempt from the Spanish language requirement, it must notify each customer through a statement provided in plain English and Spanish, in the customer rights disclosures that the information is available in Spanish from the DCTU, by mail or from the DCTU's offices.

(C) The information required in subsection (b)(4)(C) of this section must also include:

(i) the customer's right to information about rates and services;

(ii) the customer's right to inspect or obtain at reproduction cost a copy of the applicable tariffs and service rules;

(iii) information on prohibitions for disconnection of local service for the ill and disabled;

(iv) information on the availability of prepaid local telephone service as required by §26.29 of this title (relating to Prepaid Local Telephone Service (PLTS)); and

(v) information regarding privacy issues as required by §26.121 of this title (relating to Privacy Issues).

§26.32. Protection Against Unauthorized Billing Charges ("Cramming").

(a) **Purpose.** The provisions of this section are intended to ensure that each customer in this state is protected from unauthorized charges on a customer's telecommunications utility bill. This section establishes the requirements necessary to obtain and verify customer consent for charges for any product or service before the associated charges appear on the customer's telephone bill.

(b) **Application.** This section applies to all "billing agents," "billing telecommunications utilities," and "service providers" as those terms are defined in §26.5 of this title (relating to Definitions) or the Public Utility Regulatory Act (PURA). This section does not apply to:

(1) an unauthorized change in a customer's local or long distance service provider, which is addressed under §26.130 of this title (relating to Selection of Telecommunications Utilities);

(2) message telecommunications charges that are initiated by dialing 1+, 0+, 0-, 1010XXX, or collect calls and charges for video services, if the service provider has the necessary call record detail to establish the billing for the call or service; and

(3) a provider of commercial mobile radio service as defined in PURA §51.003(5).

(c) **Definition.** The term "customer," when used in this section, means the account holder, including the account holder's spouse, in whose name the telephone service is billed, including individuals, governmental units at all levels of government, corporate entities, and any other entity or person with the legal capacity to request to be billed for telephone service.

(d) **Requirements for billing authorized charges.** A service provider or billing agent must comply with this subsection before submitting charges for any product or service for billing on a customer's telephone bill:

(1) **Inform the customer.** The service provider offering the product or service must thoroughly inform each customer of the product or service being offered, including each charge associated with the product or service, and must inform each customer that the associated charges for the product or service will appear on the customer's telephone bill.

(2) **Obtain customer consent.** The service provider must obtain clear and explicit consent from the customer, verified in accordance with subsection (f) of this section, to obtain the product or service being offered and to have each charge associated with the service appear on the customer's telephone bill. A record of the customer's verified consent must be maintained by the service provider offering the product or service for at least 24 months immediately after the verified consent was obtained.

(3) **Provide contact information.** The service provider offering the product or service, and any billing agent for the service, must provide each customer with a toll-free telephone number that the customer may call, and an address to which the customer may write, to resolve any billing dispute and to obtain answers to any questions.

(4) **Provide business information.** The service provider, other than the billing telecommunications utility, and its billing agent must provide the billing telecommunications utility with the service provider's name, business address, and business telephone number.

(5) **Obtain billing telecommunications utility authorization.** The service provider and its billing agent must execute a written agreement with the billing telecommunications utility to bill for a product or service on the billing telecommunications utility's telephone bill. Record of this agreement must be maintained by:

(A) the service provider;

(B) any billing agent for the service provider; and

(C) the billing telecommunications utility for as long as the billing for the product or service continues, and for the 24 months immediately following the permanent discontinuation of the billing for that product or service.

(e) **Post-termination billing.** A service provider must not bill a customer for a product or service after the termination or cancellation date for that product or service unless the bill is for a product or service provided prior to the termination or cancellation date; or the service provider subsequently obtains customer consent and verification of that consent in accordance with this section.

(f) **Verification requirements.**

(1) Verification of a customer's consent for an order of a product or service must include:

(A) the date of the customer's consent;

(B) the date of the customer's verification of consent;

(C) the name and telephone number of the customer; and

(D) the exact name of the service provider as it will appear on the customer's bill.

(2) Verification of a customer's consent for an order of a product or service may not include discussion of any incentives that were or may have been offered by the service provider and must be limited to, without explanation, the identification of:

(A) each offered product or service;

(B) applicable charges;

(C) how a product or service can be cancelled, including any charges associated with terminating the product or service; and

(D) how the charge will appear on the customer's telephone bill.

(3) During any communication with a customer to verify that the customer's consent for a product or service, the independent third-party verifier or the sales representative, of the service provider must, after sufficient inquiry, ensure that the customer is authorized to order the product or service and obtains the explicit acknowledgment from the customer that charges for the product or service ordered by the customer will be assessed on the customer's telephone bill.

(4) Except in customer-initiated transactions with a certificated telecommunications utility for which the service provider has the appropriate documentation obtained in accordance with subsection (d) of this section, verification of customer consent to an order for a product or service must be verified by one or more of the following methods:

(A) Written or electronically signed documentation.

(i) Written or electronically signed verification of consent must be provided in a separate document containing only the information required by paragraphs (1) and (2) of this subsection for the sole purpose of verifying the consent for a product or service on the customer's telephone bill. A customer must be provided the option of using another form of verification as an alternative to an electronically signed verification.

(ii) The document must be signed and dated by the customer. Any electronically signed verification must include the customer disclosures required by the *Electronic Signatures in Global and National Commerce Act* 47 United States Code §7001(c).

(iii) The document must not be combined with inducements of any kind on the same document, screen, or webpage.

(iv) If any portion of the document, screen or webpage is translated into another language, then all portions of the document must be translated into that language. Every document must be translated into the same language as any promotional materials, or oral or written descriptions or instructions provided with the document, screen, or webpage.

(B) Toll-free electronic verification placed from the telephone number that is the subject of the product or service, except in exchanges where automatic number identification (ANI) from the local switching system is not technically possible. The service provider must:

(i) ensure that the electronic verification confirms the information required by paragraphs (1) and (2) of this subsection for the sole purpose of verifying the customer's consent for a product or service on the customer's telephone bill; and

(ii) establish one or more toll-free telephone numbers exclusively for the purpose of verifying the customer's consent of charges for the product or service so that the customer calling the toll-free number will reach a voice response unit or similar mechanism regarding the customer consent for the product or service and automatically records the ANI from the local switching system.

(iii) Automated systems must provide customers the option of speaking with a live person at any time during the call.

(C) Voice recording by service provider.

(i) The recorded conversation with a customer must be clear and easy-to-understand, and must contain the information required by paragraphs (1) and (2) of this subsection.

(ii) The recording must be clear and audible.

(iii) The recording must include the entire and actual conversation with the customer on audio tape, a wave sound file, or other recording device that is compatible with the commission's equipment.

(iv) The recording must be dated and include a clear and conspicuous confirmation that the customer consented to recording the

conversation and authorized the charges for a product or service on the customer's telephone bill.

(D) Independent Third-Party Verification. Independent third-party verification of consent must meet the following requirements:

(i) Verification must be given to an independent and appropriately qualified third party with no participation by a service provider, except as provided in clause (vii) of this subparagraph.

(ii) Verification must be recorded.

(iii) The recorded conversation with a customer must contain explicit customer consent to record the conversation, be in a clear and easy-to-understand manner and must comply with each of the requirements of paragraphs (1) and (2) of this subsection for the sole purpose of verifying the customer's consent of the charges for a product or service on the customer's telephone bill.

(iv) The recording must be clear and audible.

(v) The independent third-party verification must be conducted in the same language used in the sales transaction.

(vi) Automated systems must provide customers the option of speaking with a live person at any time during the call.

(vii) A service provider or its sales representative initiating a three-way call or a call through an automated verification system must disconnect from the call once a three-way connection with the third-party verifier has been established unless the service provider meets the following requirements:

(I) the service provider files a sworn written certification with the commission that the sales representative is unable to disconnect from the sales call after initiating third party verification. Such certification should provide sufficient information describing the reasons for the inability of the sales agent to disconnect from the line after the third-party verification is initiated. The service provider is exempt from this requirement for a period of two years from the date the certification was filed with the commission;

(II) the service provider seeking to extend its exemption from this clause must, before the end of the two-year period, and every two years thereafter, recertify to the commission its continued inability to comply with this clause.

(III) The independent third party verification must immediately terminate if the sales agent of an exempt service provider, in accordance with subclause (I) of this clause, responds to a customer inquiry, speaks after third party verification has begun, or in any manner prompts one or more of the customer's responses.

(viii) The independent third party must:
(I) not be owned, managed, directed or directly controlled by the service provider or the service provider's marketing agent;
(II) not have financial incentive to verify the consent to charges; and
(III) operate in a location that is physically separate from the service provider or the service provider's marketing agent.
(ix) The recording must include the entire and actual conversation with the customer on audio tape, a wave sound file, or other recording device that is compatible with the commission's equipment.
(x) The recording must be dated and include clear and conspicuous confirmation that the customer authorized the charges for a product or service on the customer's telephone bill.

(5) Any other verification method approved by the FCC.

(6) A record of the verification required by subsection (f) of this section must be maintained by the service provider offering the product or service for at least 24 months immediately after the verification was obtained from the customer.

(g) **Expiration of consent and verification.**

(1) If a customer consents to obtain a product or service but that product or service is not provided within 60 calendar days from the date of customer consent:
(A) The customer's consent is null and void, and
(B) Before the charge may appear on the customer's bill, the service provider must obtain new consent and verification of that new consent in accordance with this section.

(2) Paragraphs (1)(A) and (B) of this subsection do not apply to a verification of consent relating to multi-line or multi-location business customers that have entered into negotiated agreements with a service provider for a product or service provisioned under, and during the term of, the agreement. The verified consent must be valid for the period specified in the agreement.

(h) **Unauthorized charges.**

(1) **Responsibilities of the billing telecommunications utility for unauthorized charges.** If a customer is charged for any product or service without proper customer verified consent in compliance with this section, the telecommunications utility that billed the customer must promptly, but not later than 45 calendar days upon becoming aware an unauthorized charge meet the following requirements:
(A) A billing telecommunications utility must:
(i) notify the service provider to immediately cease charging the customer for the unauthorized product or service;
(ii) remove the unauthorized charge from the customer's bill;
(iii) refund or credit to the customer all money that has been paid by the customer for any unauthorized charge, and if any unauthorized charge that has been paid is not refunded or credited within three

billing cycles, must pay interest at an annual rate established by the commission in accordance with §26.27 of this title (relating to Bill Payment and Adjustments) on the amount of any unauthorized charge until it is refunded or credited;

(iv) upon the customer's request, provide the customer with all billing records under its control related to any unauthorized charge within 15 working days after the date of the removal from the customer's telephone bill;

(v) provide the service provider with the date the customer requested that the unauthorized charge be removed from the customer's bill and the dates of the actions required by clauses (ii) and (iii) of this subparagraph, and

(vi) maintain on an ongoing basis, a rolling 24 month record of every customer who has experienced any unauthorized charge for a product or service on the customer's telephone bill and has notified the billing telecommunications utility of the unauthorized charge. The record must contain for each alleged unauthorized charge:

(I) the name of the service provider that offered the product or service;

(II) each affected telephone number and address;

(III) the date each customer requested that the billing telecommunications utility remove the unauthorized charge from the customer's telephone bill;

(IV) the date the unauthorized charge was removed from the customer's telephone bill; and

(V) the date the customer was refunded or credited any money that the customer paid for the unauthorized charges.

(B) A billing telecommunications utility must not:

(i) suspend or disconnect telecommunications service to any customer for nonpayment of an unauthorized charge; or

(ii) file an unfavorable credit report against a customer who has not paid charges that the customer has alleged were unauthorized unless the dispute regarding the unauthorized charges is ultimately resolved against the customer. The customer must remain obligated to pay any charges that are not in dispute, and this paragraph does not apply to those undisputed charges.

(2) **Responsibilities of the service provider for unauthorized charges**. The service provider responsible for placing any unauthorized charge on a customer's telephone bill must:

(A) immediately cease billing upon notice from the customer or the billing telecommunications utility for a product or service that a charge for such product or service has not been authorized by the customer;

(B) for at least 24 months following the completion of the steps required by paragraph (1)(A) of this subsection, maintain a record for every disputed charge for a product or service on the customer's telephone bill. Each record must contain:

(i) each affected telephone number and address;

(ii) the date the customer requested that the billing telecommunications utility remove the unauthorized charge from the customer's telephone bill;

(iii) the date the unauthorized charge was removed from the customer's telephone bill; and

(iv) the date that action was taken to refund or credit to the customer any money that the customer paid for the unauthorized charges; and

(C) not resubmit any unauthorized charge to the billing telecommunications utility for any past or future period.

(i) **Notice of customer rights.**

(1) Each notice, as provided under paragraph (2) of this subsection, must also contain the billing telecommunications utility's name, address, and a working, toll-free telephone number for customer contacts.

(2) Every billing telecommunications utility must provide the following notice, verbatim, to each of the utility's customers:

****

Charges on Your Telephone Bill
Your Rights as a Customer

Placing charges on your phone bill for products or services without your consent is known as "cramming" and is prohibited by law. Your telephone company may be providing billing services for other companies, so other companies' charges may appear on your telephone bill.

If you believe you were "crammed,"" you should contact the telephone company that bills you for your telephone service, (insert name of company), at (insert company's toll-free telephone number) and request that it take corrective action. The Public Utility Commission of Texas requires the billing telephone company to do the following within 45 calendar days of when it learns of the unauthorized charge:

- Notify the service provider to cease charging you for the unauthorized product or service;
- remove any unauthorized charge from your bill;
- refund or credit all money to you that you have paid for an unauthorized charge; and
- on your request, provide you with all billing records related to any unauthorized charge within 15 working days after the charge is removed from your telephone bill.

If the company fails to resolve your request, or if you would like to file a complaint, please write or call the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or toll-free in Texas at (888) 782-8477. Hearing and speech-impaired individuals may contact the commission through Relay Texas at 1-800-735-2989.

Your phone service cannot be disconnected for disputing or refusing to pay unauthorized charges.

You may have additional rights under state and federal law. Please contact the Federal Communications Commission, the Attorney General of Texas, or the Public Utility Commission of Texas if you would like further information about possible additional rights.

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(3) **Distribution and timing of notice.**

(A) Each billing telecommunications utility must mail the notice as provided under paragraph (2) of this subsection to each of its residential and business customers within 60 calendar days after the effective date of this section, or by inclusion in the next publication of the utility's telephone directory following 60 calendar days after the effective date of this section. Each billing telecommunications utility must send the notice to new customers at the time service is initiated or upon customer request.

(B) Every telecommunications utility that prints its own telephone directory must print the notice in the white pages of the directory, in nine point print or larger, beginning with the first publication of the directory after 60 calendar days following the effective date of this section. Subsequently, the notice must appear in the white pages of each telephone directory published by or for the telecommunications utility.

(4) Any bill sent to a customer from a telecommunications utility must include a statement, prominently located on the bill, that if the customer believes the bill includes unauthorized charges, the customer may contact: Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or toll-free in Texas at (888) 782-8477. Hearing and speech-impaired individuals may contact the commission through Relay Texas at 1-800-735-2989.

(5) Each billing telecommunications utility must, as necessary to adequately inform the customer, make available to its customers the notice as set out in paragraph (2) of this subsection in both plain English and Spanish. The commission may exempt a billing telecommunications utility from the requirement that the information be provided in Spanish upon an application showing that:

(A) 10% or fewer of its customers are exclusively Spanish-speaking; and

(B) a confirmation that the billing telecommunications utility will notify all customers through an addendum to the notice that states, in plain English and Spanish, that the information is available in Spanish from the telecommunications utility, both by mail and at the utility's offices.

(6) The customer notice requirements in paragraphs (1) and (2) of this subsection may be combined with the notice requirements of §26.130(g)(3) of this title if the information required by each is in the combined notice.

(7) The customer notice requirements in paragraph (4) of this subsection may be combined with the notice requirements of §26.130(i)(4) of this title if the information required by each is in the combined notice.

(j) **Complaints to the commission.** A customer may file a complaint with the commission's Consumer Protection Division (CPD) against a service provider, billing agent or billing telecommunications utility for any reason related to the provisions of this section.

(1) **Customer complaint information.** CPD may request, at a minimum, the following information:

(A) the customer's name, address, and telephone number;

(B) a brief description of the facts of the complaint;

(C) a copy of the customer's and spouse's legal signature; and

(D) a copy of the most recent phone bill and any prior phone bill that show the alleged unauthorized product or service.

(2) **Service provider's, billing agent's or billing telecommunications utility's response to complaint.** After review of a customer's complaint, CPD must forward the complaint to the service provider, billing agent or billing telecommunications utility named in that complaint. The service provider, billing agent or telecommunications utility must respond to CPD within 15 calendar days after CPD forwards the complaint. The response must include, to the extent it is within the custody or control of the service provider, billing agent or billing telecommunications utility, the following:

(A) all documentation related to verification of customer consent used to charge the customer for the product or service; and

(B) all corrective actions taken as required by subsection (h) of this section, if the customer's consent for the charge for the product or service was not verified in accordance with subsection (f) of this section.

(k) **Compliance and enforcement.**

(1) **Records of customer verifications.** A service provider, billing agent or billing telecommunications utility must provide a copy of records maintained under the requirements of subsections (d) and (f) of this section to the commission staff within 21 calendar days of a request for such records.

(2) **Records of disputed charges.** A billing telecommunications utility or a service provider must provide a copy of records maintained under the requirements of subsection (h) of this section to the commission staff within 21 calendar days of a request for such records.

(3) **Failure to provide thorough response.** The proof of verified consent as required under subsection (j)(2)(A) of this section must establish a verified authorized charge in the manner prescribed by subsection (f) of this section. Failure to timely submit a response that addresses the complainant's assertions within the time specified in subsections (j)(2), (k)(1), and (k)(2) of this section establishes a violation of this section.

(4) **Administrative penalties.** If the commission finds that a billing telecommunications utility has violated any provision of this section, the commission will order the utility to take corrective action, as necessary, and the utility may be subject to administrative penalties and other enforcement actions in accordance with PURA, Chapter 15 and §22.246 of this title (relating to Administrative Penalties).

(5) **Evidence.** Evidence provided by the customer that meets the standards established by Texas Government Code §2001.081, including, one or more affidavits from a

customer challenging the charge, is admissible in a proceeding to enforce the provisions of this section.

(6) **Additional Corrective Action.** If the commission finds that any other service provider or billing agent subject to PURA, Chapter 17, Subchapter D, or Chapter 64, Subchapter D has violated any provision of this section or has knowingly provided false information to the commission on matters subject to PURA, Chapter 17, Subchapter D, or Chapter 64, Subchapter D, the commission will order the service provider or billing agent to take corrective action, as appropriate, and the commission may enforce the provisions of PURA, Chapter 15 and §22.246 of this title, against the service provider or billing agent as if the service provider or billing agent were regulated by the commission.

(7) **Certificate suspension, restriction or revocation.** If the commission finds that a billing telecommunications utility or a service provider has repeatedly violated this section and, if consistent with the public interest, the commission may suspend, restrict, or revoke the registration or certificate of the telecommunications service provider. denying the service provider the right to provide service in this state. The commission may not revoke a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority of a telecommunications utility except as provided by PURA §54.008.

(8) **Termination of billing and collection services.** If the commission finds that a service provider or billing agent has repeatedly violated any provision of PURA, Chapter 17, Subchapter D, or Chapter 64, Subchapter D, the commission may order the billing telecommunications utility to terminate billing and collection services for that service provider or billing agent.

(9) **Coordination with Office of Attorney General.** The commission will coordinate its enforcement efforts regarding the prosecution of fraudulent, unfair, misleading, deceptive, and anticompetitive business practices with the Office of the Attorney General to ensure consistent treatment of specific alleged violations.

§26.34. Telephone Prepaid Calling Services.

(a) **Purpose.** The provisions of this section are intended to prescribe standards for the information a prepaid calling services provider must disclose to customers regarding the rates and terms of service for prepaid calling services offered in this state.

(b) **Application.** This section applies to any "telecommunications utility" as defined by §26.5 of this title, relating to Definitions. This section does not apply to a deregulated company holding a certificate of operating authority, or to an exempt carrier utility that meets the criteria of Public Utility Regulatory Act (PURA) §52.154. This section also does not apply to a credit calling card in which a customer pays for a service after use and receives a monthly bill for such use.

(c) **Liability.** A prepaid calling services company is responsible for ensuring, either through its contracts with its network provider, distributors and marketing agents or other means, that:

(1) end-user purchased prepaid calling service remains usable in accordance with the requirements of this section; and

(2) compliance requirements of all disclosure provisions of this section are met.

(d) **Definitions.** The following terms used in this section have the following meanings, unless the context indicates otherwise:

(1) Access telephone number -- The number that allows a prepaid calling services customer to access the services of a telecommunications utility to place telephone calls.

(2) Billing increment -- A unit of time used to charge customers for prepaid calling services.

(3) Personal identification number (PIN) -- A number assigned as an authorization code that ensures system security for a prepaid calling services customer and allows the prepaid calling services company to track minutes used.

(4) Prepaid calling services account -- An amount of money paid by a customer in advance to access the services of a telecommunications utility to place telephone calls. When the customer makes completed telephone calls, the value of the account decreases at a predetermined rate.

(5) Prepaid calling card -- A card or any other device purchased to establish a prepaid calling services account.

(6) Prepaid calling services -- Any telecommunications transaction in which:

(A) a customer pays in advance for telecommunications services;

(B) the customer's prepaid calling services account is depleted at a predetermined rate as the customer uses the service; and

(C) the customer must use a PIN and an access telephone number to use the telecommunications services.

(7) Prepaid calling services company -- A company that provides prepaid calling or other telecommunications services to the public using its own telecommunications

network or resold telecommunications services, or distributors who purchase PINs or telecommunications services to resell to the end-user customer.

(8) Recharge -- A transaction in which the value of the prepaid calling services account is renewed. The customer must be informed verbally or electronically of the new rates and surcharges at the time of recharge.

(9) Surcharge -- any fee or cost charged against a prepaid calling services account in addition to a per-minute rate or billing increment including connection, payphone, and maintenance fees.

(e) **Billing requirements for prepaid calling services.**

(1) Billing increments must be defined and disclosed in the prepaid calling services company's published tariffs or price list on file with the commission, on any display at the point of sale, on any prepaid calling card, or on any prepaid calling card packaging.

(2) A prepaid calling services account may be decreased only for a completed call. Station busy signals and unanswered calls are not completed calls and must not be charged against the account.

(3) A surcharge must not be levied more than once on a given call.

(4) Prepaid calling services companies must not reduce the value of a prepaid calling services account by more than the company's published domestic tariffs or price list on file with the commission and any surcharges filed at the commission. Domestic rates and surcharges must be disclosed at the time of purchase. Current international rates must be disclosed at the time of purchase with an explanation, if applicable, that these prices may be subject to change.

(5) The prepaid calling services account may be recharged by the customer at a different domestic rate from the original domestic rate or the last domestic recharge rate provided that the new domestic rate and any domestic or international surcharges conform with the company's published tariff or price list on file with the commission at the time of recharge. The customer must be informed of the rates at the time of recharge. A prepaid calling services company must keep internal records of changes to its international rates and must provide customers with the appropriate international rate information through a toll-free telephone number. International prepaid calling services rates must be updated annually in accordance with §26.89 of this title, relating to Information Regarding Rates and Services of Nondominant Carriers.

(6) Upon verbal or written request, prepaid calling services companies must be capable of providing a customer the following call detail data information at no charge:

(A) Dialing and signaling information that identifies the inbound access telephone number called;

(B) The number of the originating telephone;

(C) The date and time the call originated;

(D) The date and time the call terminated;

(E) The called telephone number; and

(F) The PIN or account number associated with the call.

(7) Prepaid calling services companies must maintain call detail data records for at least two years.

(f) **Written disclosure requirements for all prepaid calling services.**

(1) **Information required on prepaid calling cards**. Cards must be issued with all information required by subparagraphs (A) and (B) of this paragraph in at least the same language in which the card is marketed. Bilingual cards are permitted provided that the information required by subparagraphs (A) and (B) of this paragraph is printed in both languages.

(A) At a minimum, a card must contain the following information printed in a legible font no smaller than eight-point:

(i) The toll-free number as required by subsection (i) of this section;

(ii) The maximum rate per minute must be shown for local, intrastate, and interstate calls. International call prices must be provided to the customer through a toll-free number printed on the card. If the cost for a one minute call is higher than the maximum rate per minute, it must be printed on the prepaid calling card; and

(iii) The words "VOID" or "SAMPLE" or sequential numbers, such as "999999999" on both sides of the card if the card was produced as a "non-active" card so that it is obvious to the customer that the card is not useable. If the card is not so labeled, the card is considered active and the issuing company must honor it.

(B) At a minimum, a card must contain the following information printed in legible font no smaller than five-point:

(i) The value of the card and any applicable surcharges must be expressed in the same format such as a card whose value is expressed in minutes must express surcharges in minutes. If the value of a card is expressed in minutes, the minutes must be identified as domestic or international and the identification must be printed on the same line or next line as the value of the card in minutes;

(ii) The prepaid calling services company's name as registered with the commission. A "doing business as" name may only be used if officially filed with the commission. The language must clearly indicate that the company is providing the prepaid calling services;

(iii) Instructions on using the card correctly; and

(iv) Expiration date or policy, if the card cannot be used after a date certain. If an expiration date or policy is not disclosed on the card, it will be considered active indefinitely.

(2) **Information required at a point of sale.** All the following information must be legibly printed on or in any packaging in a minimum eight point font and displayed visibly in a prominent area at the point of sale so that the customer may make an informed decision before purchase. Bilingual information may be made available provided that the information in subparagraphs (A)-(I) of this paragraph is printed in both languages.

(A) A listing of applicable surcharges;

(B) The company's name as registered with the commission. A "doing business as" name may only be used if officially filed with the commission. The

language must clearly indicate that the company is providing the prepaid calling card services;

(C) The toll-free number as required by subsection (i) of this section;

(D) The billing increment expressed in minutes or fractions of minutes and maximum charge per billing increment for prepaid calling card services for local, intrastate, interstate, and international calls will be provided to the customer through a toll-free number printed on the card;

(E) The expiration policy, if the card cannot be used after a date certain. If an expiration date is not disclosed at the time of purchase, the prepaid calling services will be considered active until the prepaid calling services account is completely depleted;

(F) The recharge policy, if applicable. If an expiration date is not disclosed at the time prepaid calling services are recharged, the services will be considered active until the prepaid calling services account is completely depleted;

(G) The policy for rounding billing increments, if applicable;

(H) A statement that if a customer is unable to resolve a complaint with the company that the customer has the right to contact the state regulatory agency which has jurisdiction within the state where the prepaid calling services were purchased; and

(I) A statement that:

(i) Notifies a customer of the customer's extent of liability for lost or stolen cards, if there is liability; and

(ii) Warns a customer to safeguard the card against loss or theft.

(3) If a customer asks a prepaid calling services company how to file a complaint, the company must provide the following contact information: PUCT, Consumer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326; phone: (512) 936-7120 or in Texas (toll-free) 1-888-782-8477;; e-mail address: consumer@puc.texas.gov; Internet address: www.puc.texas.gov; and Relay Texas (toll-free): 1-800-735-2989.

(g) **Verbal disclosure requirements for prepaid calling services.** Prepaid calling services companies must provide an announcement:

(1) At the beginning of each call indicating the domestic minutes, billing increments, or dollars remaining on the prepaid calling services account or prepaid calling card; and

(2) When the prepaid account or card balance is about to be completely depleted. This announcement must be made at least one minute or billing increment before the time expires.

(h) **Registration requirements for prepaid calling services companies.** All prepaid calling services companies must register with the commission in accordance with §26.107 of this title (relating to Registration of Interexchange Carriers (IXCs), Prepaid Calling Services Companies (PPC), and Other Nondominant Telecommunications Carriers.

(i) **Business and technical assistance requirements for prepaid calling services companies.** A prepaid calling services company must provide a toll-free number with a live operator to answer incoming calls 24 hours a day, seven days a week or electronically voice record customer inquiries or complaints. A combination of live operators or recorders may be used. If a recorder is used, the prepaid calling services company must attempt to contact each customer no later than the next working day following the date of the recording. Personnel must be sufficient in number and expertise to resolve customer inquiries and complaints. If an immediate resolution is not possible, the prepaid calling services company must resolve the inquiry or complaint by calling the customer or, if the customer requests, in writing within ten working days of the original request. In the event a complaint cannot be resolved within ten days of the request, the prepaid calling services provider must advise the complainant in writing of the status and subsequently complete the investigation within 21 days of the original request.

(j) **Requirements for refund of unused balances.** If a prepaid calling services company fails to provide service at the rates disclosed at the time of initial purchase or at the time an account is recharged, or fails to meet technical standards, the prepaid calling services company must either refund the customer for each unused prepaid calling service or provide equivalent service.

(k) **Requirements when a prepaid calling services company terminates operations in this state.**

(1) When a prepaid calling services company expects to terminate operations in this state for any reason, the company must at least 30 days prior to the termination of operations:

(A) Notify the commission in writing:

(i) That operations will be ending;

(ii) Of the date of the termination of operations; and

(iii) That the company certifies that the actions required by this subsection have been completed;

(B) Notify each customer at the address on file with the company, if applicable, that operations will be ending the date of the termination of operations, and explain how customers may receive a refund or equivalent services for any unused services;

(C) Announce the termination of operations at the beginning of each call, including the date of termination and a toll-free number to call for more information; and

(D) Provide to customers via its toll-free customer service number the procedure for obtaining refunds and continue to provide this information for at least 60 days after the date the company terminates operations.

(2) Within 24 hours after ceasing operations, the prepaid calling services company must deliver to the commission a list of names, if known, and account numbers of all customers with unused balances. For each customer, the list must include the following:

(A) The identification number used by the company for billing and debit purposes; and,

(B) The unused time, stated in minutes, as applicable, and the unused dollar amount of the prepaid calling services account.

(l) **Date of compliance for prepaid calling card services companies.** Prepaid calling service offered for sale in the state of Texas and each prepaid calling services company must be in compliance with this rule within six months of the effective date of this section**.**

(m) **Compliance and enforcement.**

(1) **Administrative penalties.** If the commission finds that a prepaid calling services company has violated any provision of this section, the commission will order the company to take corrective action, as necessary, and the company may be subject to administrative penalties and other enforcement actions under PURA, Chapter 15.

(2) **Enforcement.** The commission will coordinate its enforcement efforts against a prepaid calling services company for fraudulent, unfair, misleading, deceptive, or anticompetitive business practices with the Office of the Attorney General to ensure consistent treatment of specific alleged violations.

§26.52. Emergency Operations.

(a) This section does not apply to the retail services of an electing company, as defined by the Public Utility Regulatory Act (PURA) §58.002, or to the retail nonbasic services offered by a transitioning company, as defined by PURA §65.002.

(b) **Emergency power requirements.**

(1) Each dominant certificated telecommunications utility's (DCTU) central office not equipped with permanently installed standby generators must contain adequate provisions for emergency power, including four hours of battery reserve without voltage falling below the level required for proper operation of all equipment.

(2) In central offices without installed emergency power facilities, there must be a mobile power unit available that can be delivered and connected on short notice.

(3) As applicable, each DCTU must comply with the backup power obligations prescribed by federal law or other applicable regulations, including the requirements of 47 Code of Federal Regulations §9.20.

(c) In exchanges exceeding 5,000 lines, a permanent auxiliary power unit must be installed.

§26.53. Inspections and Tests.

(a) This section does not apply to the retail services of an electing company, as defined by Public Utility Regulatory Act (PURA) §58.002, or to the retail nonbasic services offered by a transitioning company, as defined by PURA §65.002.

(b) Each dominant certificated telecommunications utility (DCTU) must adopt a program of periodic tests, inspections, and preventive maintenance aimed at achieving efficient operation of its system and rendition of safe, adequate, and continuous service.

(c) Each DCTU must maintain or have access to test facilities enabling it to determine the operating and transmission capabilities of all equipment and facilities. The actual transmission performance of the network must be monitored to determine if the service objectives in this chapter are met. This monitoring function must include circuit order tests prior to placing trunks in service, routine periodic trunk maintenance tests, tests of actual switched trunk connections, periodic noise tests of a sample of customer loops in each exchange, and special transmission surveys of the network.

(d) Each central office serving more than 300 customer access lines must be equipped with a 1,000 +/- 20 hertz, one milliwatt test signal generator and a 900 Ohm balanced termination device wired to telephone numbers so that they may be accessed for dial test purposes. Upon commission request, each DCTU must provide the commission the numbers assigned for these test terminations.

§26.54. Service Objectives and Performance Benchmarks.

(a) **Applicability.** This section establishes service objectives for a dominant certificated telecommunications utility (DCTU), as applicable. A deregulated company that holds a certificate of operating authority or a transitioning company in a market that is deregulated, is exempt from complying with the retail quality of service standards and reporting requirements in this section.

(1) This section outlines performance benchmark levels for each exchange. If service quality falls below the applicable performance benchmark for an exchange, that indicates a need for the utility to investigate, take appropriate corrective action, and provide a report of such action to the commission.

(2) The objective service levels are based on monthly averages, except for dial service and transmission requirements, which are based on specific samples. DCTUs must make measurements to determine the level of service quality for each item included in this section.

(3) Upon commission request, a DCTU must provide the commission with the measurements and summaries for any of the service or performance benchmarks provided by this section. Records of these measurements and summaries must be retained by the DCTU as specified by the commission.

(4) For purposes of this section, an "answer" means that the operator, interactive voice system, or representative, is ready to render assistance or ready to accept information necessary to process the call. An acknowledgment that the customer is waiting on the line does not constitute an answer.

(b) Each DCTU must comply with the service quality objectives established below in providing the basic telecommunications service to its end-use customers and must file its service quality performance report on a quarterly basis. The report must include its monthly performance for each category of performance objectives and provide a summary of its corrective action plan for each exchange in which the performance falls below the benchmark. Additionally, the corrective action plan must include, at a minimum, details outlining how the necessary improvements will be implemented within three months from the filing of the service quality performance report and will result in performance at or above the applicable benchmark.

(1) **Installation of service.** Unless otherwise provided by the commission:

(A) Ninety-five percent of the DCTU's service orders for installing primary service must be completed within five working days, excluding those orders where a later date was specifically requested by the customer. Performance Benchmark Applicable for Corrective Action: If the performance is below 95% in any exchange area for a period of three consecutive months, the DCTU must provide a detailed corrective action plan for such an exchange or wire center.

(B) Ninety percent of the DCTU's service orders for regular service installations must be completed within five working days, excluding those orders where a later date was specifically requested by the customer. This includes orders for any primary service, installation, move, change, or other

service, except for any complex service. Performance Benchmark for Corrective Action: If the performance is below 90% in any exchange area for a period of three consecutive months the DCTU must provide a detailed corrective action plan for such an exchange or wire center.

(C) Ninety-nine percent of the DCTU's service orders for service installations must be completed within 30 days. Performance Benchmark for Corrective Action: If the performance is below 99% in any exchange area for a period of three consecutive months, the DCTU must provide a detailed corrective action plan for such an exchange or wire center.

(D) One-hundred percent of the DCTU's service orders for service installations must be completed within 90 days.

(E) Each DCTU must establish and maintain installation time commitment guidelines for the various complex services contained in the DCTU's tariff. Those guidelines should be available for public review and should be applied in a nondiscriminatory manner.

(F) The installation interval measurements outlined in subparagraphs (A)-(D) and (H) of this paragraph must commence by either the date of application or the date on which the applicant qualifies for service, whichever is later.

(G) The DCTU must provide to the customer a commitment date on which the requested installation or change will be made. If a customer requests that the installation or change be performed on a regular working day later than the date proposed by the DCTU, then the customer's requested date will be the commitment date. If a premises visit is required, the DCTU must schedule an appointment period with the customer for the morning or afternoon, not to exceed a four hour time period, on the commitment date. If the DCTU is unable to keep the appointment, the DCTU must attempt to notify the customer by a telephone call and schedule a new appointment. If unable to gain access to the customer's premises during the scheduled appointment period, the DCTU's carrier representative must leave a notice at the customer's premises advising the customer how to reschedule the work.

(H) Ninety percent of the DCTU's commitments to customers for the date of installation of service orders must be met, excepting customer-caused delays. Performance Benchmark Applicable for Corrective Action: If the performance is below 90% in any exchange area for a period of three consecutive months, the DCTU must submit a list of missed commitments to the commission and provide a detailed corrective action plan for such an exchange or wire center.

(I) The installation interval and commitment requirements of subparagraphs (A) - (D) and (H) of this paragraph do not include service orders either to disconnect service or to make only record changes on a customer's account.

(J) A held regrade order means an order not filled within 30 days after the customer has submitted an application for a different grade of service, except where the customer requests a later date. In the event of the DCTU's inability to so fill such an order, the customer must be advised and told when

the DCTU can fulfill the order. The number of held regrade orders must not exceed 1.0% of the total number of customer access lines served.

(2) **Operator-handled calls.** For each exchange, a DCTU must, on a monthly basis, maintain adequate personnel to provide an average operator answering performance as follows :

(A) Eighty-five percent of toll and assistance operator calls answered within ten seconds, or average answer time must not exceed 3.3 seconds. Benchmark for Corrective Action: If the performance is either below 85% within ten seconds or if the average exceeds 3.3 seconds at any answering location in any given month, the DCTU must provide a detailed corrective action plan for such an exchange or wire center.

(B) Ninety percent of repair service calls must be answered within 20 seconds or average answer time must not exceed 5.9 seconds. Benchmark for Corrective Action: If the performance is below 90% within 20 seconds or the average answer time exceeds 5.9 seconds at any answering location for a period of five days within any given month, the DCTU must provide a detailed corrective action plan for such an exchange or wire center.

(C) Eighty-five percent of directory assistance calls must be answered within ten seconds or the average answer time must not exceed 5.9 seconds. Benchmark for Corrective Action: If the performance is either below 85% within ten seconds or if the average answer time exceeds 5.9 seconds at any answering location in any given month, the DCTU must provide a detailed corrective action plan for such an exchange or wire center.

(D) DCTUs may measure answer time on a toll center or operating unit basis as an alternative to measuring answer time in each exchange unless specifically requested by the commission.

(3) **Local dial service.** Sufficient central office capacity and equipment must be utilized to meet the following requirements:

(A) dial tone within three seconds on 98% of calls. For record-keeping and reporting purposes, 96% in three seconds during average busy season or busy hour complies with this requirement;

(B) completion of 98% of calls originating and terminating within the same central office building (intraoffice calls) without encountering network congestion or blockage, or equipment irregularities;

(C) for every switch that serves a customer, the availability factor for stored program controlled digital and analog switching facilities must be 99.99%, or the total unscheduled outage for each switch must not exceed 53 minutes per year.

(D) For any exchange that falls below the established performance objective level, a report detailing the cause and proposed corrective action for the local dial service measures must be submitted to the commission.

(4) **Local interoffice dial service.**

(A) Each DCTU must provide and maintain interoffice trunks on its portion of the local exchange service network so that 97% of the interoffice local calls excluding calls between central offices in the same building are completed

without encountering equipment busy conditions or equipment failures. For a DCTU's testing, record-keeping, and reporting purposes, the DCTU is not required to separate local dial service results from local interoffice dial service results unless specifically requested by the commission.

(B) The availability factor for stored program controlled digital and analog switching and interoffice transmission facilities for end-to-end transmission must be 99.93%, or the total unscheduled outage must not exceed 365 minutes per year.

(C) For any exchange that falls below the established performance objective level, a report detailing the cause and proposed corrective action for the local dial service measures, must be submitted to the commission.

(5) **Direct distance dial service.** Engineering and maintenance of the trunk and related switching components in the toll network must permit 97% completion on properly dialed calls, without encountering failure because of network congestion or blockages, or equipment irregularities. For any exchange that falls below the established performance objective level, the DCTU must submit to the commission a report detailing the cause and proposed corrective action for the direct distance dial service measure, .

(6) **Customer trouble reports.**

(A) A DCTU that serves more than 10,000 access lines must maintain its network service in a manner that ensures the DCTU receives no more than three customer trouble reports on a company-wide basis, excluding customer premises equipment (CPE) reports, per 100 customer access lines per month on average. Performance Benchmark Applicable for Corrective Action: If the customer trouble report exceeds 3.0%, or three per 100 access lines, for a large exchange or 6.0%, or six per 100 access lines, for a small exchange for three consecutive months, the DCTU must provide a detailed corrective action plan for such an exchange or wire center. For purposes of this section, a large exchange is defined as an exchange serving 10,000 or more access lines and a small exchange is defined as an exchange serving less than 10,000 access lines.

(B) A DCTU that serves 10,000 or less access lines must maintain its network service in a manner that ensures the DCTU receives no more than six customer trouble reports on a company-wide basis, excluding CPE reports, per 100 customer access lines per month on average. Performance Benchmark Applicable for Corrective Action. If the customer trouble report exceeds 6.0%, or six per 100 access lines per exchange for three consecutive months, the DCTU must provide a detailed corrective action plan for such an exchange or wire center.

(C) The DCTU must provide to the customer a commitment date by which the trouble will be cleared. If a premises visit is required, the DCTU must schedule an appointment period with the customer for the morning or afternoon, not to exceed a four hour time period, on the commitment date. If the DCTU cannot keep an appointment, the DCTU must attempt to notify the customer by a telephone call and schedule a new appointment. If unable to gain access to the customer's premises during the scheduled appointment

period, the DCTU representative must leave a notice at the premises advising the customer how to reschedule the work.

(D) At least 90% of out-of-service trouble reports on service provided by a DCTU must be cleared within eight hours, except where access to the customer's premises is required but unavailable or where interruptions are caused by a force majeure affecting large groups of customers. Performance Benchmark Applicable for Corrective Action: If the performance is below 90% in any exchange area for a period of three consecutive months, the DCTU must provide a detailed corrective action plan for such an exchange or wire center.

(E) Each DCTU must establish procedures to ensure the prompt investigation and correction of trouble reports so that the percentage of repeated trouble reports on residence and single line business lines does not exceed 22% of the total customer trouble reports on those lines. Performance Benchmark Applicable for Corrective Action: If repeat reports exceed 22% of the total customer trouble report in any exchange for three consecutive months, the DCTU must provide a detailed corrective action plan for such an exchange or wire center.

(7) **Transmission requirements.** All voice-grade trunk facilities must conform to accepted transmission design factors and must be maintained to meet the following objectives when measured from line terminals of the originating central office to the line terminals of the terminating central office. A periodic report for central offices or exchanges as requested by the commission staff must be provided by the DCTU to demonstrate compliance with the following objectives.

(A) Interoffice local exchange service calls. Excluding calls between central offices in the same building, 95% of the measurements on the network of a DCTU should have a C-message weighting between two to ten decibels loss at 1000+20 hertz and no more than 30 decibels above reference noise level.

(B) Direct distance dialing. Ninety-five percent of the transmission measurements should have a C-message weighting from three to 12 decibels loss at 1000+20 hertz and no more than 33 decibels above reference noise level.

(C) Subscriber lines. All newly constructed and rebuilt subscriber lines must be designed for a transmission loss of no more than eight decibels from the serving central office to the customer premises network interface. All subscriber lines must be maintained so that transmission loss does not exceed ten decibels. Subscriber lines must in addition be constructed and maintained so that metallic noise does not exceed a C-message weighting of 30 decibels above reference noise level on 90% of the lines. Metallic noise must not exceed a C-message weighting of 35 decibels above reference noise level on any subscriber line.

(D) Private Branch Exchange (PBX), key, and multiline trunk circuits. PBX, key, and multiline trunk circuits must be designed and maintained so that transmission loss at the subscriber station does not exceed eight decibels. If the PBX or other terminating equipment is customer-owned and, if transmission loss exceeds eight decibels, the DCTU's responsibility is

limited to providing a trunk circuit with no more than five decibels loss from the central office to the point of connection with the customer's facilities.

(E) Impulse Noise Limits. The requirements for impulse noise limits are as follows:

(i) For switching offices, the noise level count must not exceed five pulses above the threshold in any continuous five minute period on 50% of test calls. The reference noise level threshold must be less than: 54 decibels above reference noise with C-message weighting (dBrnC) for a Crossbar switch, 59 dBrnC for a step-by-step switch, and 47 dBrnC for a electronic or digital switch.

(ii) For trunks, the noise level count must not exceed five pulses above the threshold in any continuous five minute period on 50% of trunks in a group. The reference noise level threshold must be less than 54 dBrnC at a zero transmission level point (dBrnC0) for voice frequency trunks, and 62 dBrnC0 for digital trunks.

(iii) For loop facilities, the noise level count must not exceed 15 pulses above the threshold in any continuous 15 minute period on any loop. The reference noise level threshold must be less than 59 dBrnC when measured at the central office, or referred to the central office through 1004 Hz loss.

§26.73. Annual Earnings Report.

(a) Each utility must file with the commission, on commission-prescribed forms available on the commission's website, an earnings report providing the information required to enable the commission to properly monitor public utilities within the state. A deregulated or transitioning company is not required to file an earnings report with the commission unless the company is receiving support from the Texas High Cost Universal Service Plan.

(1) Each utility must report information related to the most recent calendar year as specified in the instructions to the report.

(2) Each utility must file a copy of the commission-prescribed earnings report with the commission no later than May 15th of each year.

(3) A utility with a rate proceeding pending before the commission on the due date of the annual earnings report, under Public Utility Regulatory Act (PURA), Chapter 53, in which a rate filing package is required, or who had a final order issued in such a proceeding within the previous 12 months, is exempt from filing the report.

(b) In addition to the utilities required to file under subsection (a) of this section, a telecommunications provider must file with the commission the provider's annual earnings report if the provider:

(1) Is not a local exchange company subject to a total support reduction plan under §26.403 of this title (relating to the Texas High Cost Universal Service Plan) or that has made an election under PURA §56.023(l);

(2) Serves greater than 31,000 access lines; and

(3) Receives support under a plan established under PURA §56.021(1).

(c) A report filed under this section is confidential and not subject to disclosure under the Texas Government Code, Public Information Act, Chapter 552.

§26.79. Equal Opportunity Reports.

(a) This section does not apply to a deregulated company that holds a certificate of operating authority or to an exempt carrier under Public Utility Regulatory Act (PURA) §52.154.

(b) The term "minority group members," when used within this section, must include only members of the following groups:
(1) African-Americans;
(2) American Indians;
(3) Asian-Americans;
(4) Hispanic-Americans and other Americans of Hispanic origin; and
(5) women.

(c) Each utility that files any form with local, state or federal governmental agencies relating to equal employment opportunities for minority group members, (e.g., EEOC Form EEO-1, FCC Form 395, RUS Form 268, etc.) must file a copy of such completed forms with the commission. If such a form submitted by a multi-jurisdictional utility does not indicate Texas-specific numbers, the utility must also prepare, and file with the commission, a form indicating Texas-specific numbers, in the same format and based on the numbers contained in the form previously filed with local, state or federal governmental agencies. Each utility must also file with the commission copies of any other forms required to be filed with local, state or federal governmental agencies which contain the same or similar information, such as personnel data identifying numbers and occupations of minority group members employed by the utility, and employment goals relating to them, if any.

(d) Any additional information relating to the matters described in this section may be submitted at the utility's option.

(e) Any utility filing with the commission any documents described in subsections (c) and (d) of this section must file a copy of such documents with the commission under the project number assigned for that year's filings. Utilities may obtain the project number by contacting Central Records.

(f) A utility that files a report with local, state or federal governmental agencies and that is required by this section to file such a report with the commission, must file the report by December 30 of the same calendar year it is filed with the local, state or federal agencies.

(g) A utility that files a report in accordance with §26.85(f)(1) of this title (relating to Report of Workforce Diversity and Other Business Practices) satisfies the requirements of subsection (c) of this section.

§26.80. Annual Report on Historically Underutilized Businesses.

(a) This section does not apply to a company that holds a certificate of operating authority, a company that holds a service provider certificate of operating authority, a registered interexchange carrier, or an exempt carrier that meets the criteria of Public Utility Regulatory Act (PURA) §52.154.

(b) In this section, "historically underutilized business" has the same meaning as defined by Title 10, Subtitle D, Chapter 2161 of the Texas Government Code.

(c) Every utility must report its use of historically underutilized businesses (HUBs) to the commission on the form prescribed by the commission. A utility may submit the report physically or digitally in Microsoft Excel format.

(1) Each small local exchange company and telephone cooperative utility must, on or before December 30 of each calendar year, submit to the commission a comprehensive annual report detailing its use of HUBs for the four quarters ending on September 30 of the calendar year the report is filed, using the form prescribed by the commission.

(2) Every utility other than those specified in paragraph (1) of this subsection, must, on or before December 30 of each calendar year, submit to the commission a comprehensive annual report detailing its use of HUBs for the four prior quarters ending on September 30 of the calendar year the report is filed, using the form prescribed by the commission.

(3) Each utility that reports indirect HUB procurements or HUB procurements made by a contractor of the utility report such procurements separately on the form prescribed by the commission .

(4) Each utility must submit a text description of how it determined which of its vendors meets the criteria for a HUB.

(5) Each utility that has more than 1,000 customers in a state other than Texas or that purchases more than 10% of its goods and services from vendors not located in Texas must separately report, by total and category, all utility purchases, all utility purchases from Texas vendors, and all utility purchases from Texas HUB vendors. A vendor is a Texas vendor if the vendor is physically located within the boundaries of Texas.

(6) Each utility must also file any other information necessary to accurately assess the utility's use of HUBs.

(d) A utility is prohibited from utilizing information gathered to comply with this section to discriminate against any citizen on the basis of race, nationality, color, religion, sex, or marital status.

(e) This section does not create a new private or public cause of action

§26.85. Report of Workforce Diversity and Other Business Practices.

(a) **Purpose.** This section establishes annual reporting requirements for a telecommunications utility to report its progress and efforts to improve workforce diversity and contracting opportunities for small and historically underutilized businesses from its five-year plan filed in accordance with the Public Utility Regulatory Act (PURA) §52.256(b).

(b) **Application.** This section applies to a telecommunications utility, as defined in PURA §51.002(11), doing business in the State of Texas. This section does not apply to a company that holds a certificate of operating authority, a company that holds a service provider certificate of operating authority, a registered interexchange carrier, or an exempt carrier that meets the criteria of PURA §52.154.

(c) **Terminology**. In this section, "small business" and "historically underutilized business" have the meaning assigned by the Texas Government Code §481.191.

(d) **Annual progress report of workforce and supplier contracting diversity.** An "Annual Progress Report on Five-Year Plan to Enhance Supplier and Workforce Diversity" must be filed annually with the commission. The report must be filed on or before December 30 of each year for the four prior quarters ending on September 30 of the year the report is filed. A telecommunication utility that was not operational on January 1, 2000, and is required to file in accordance with PURA §52.256(b), must file a plan in Project Number 21170 by December 30 of the year in which an annual report is due under this subsection.

(e) **Filing requirements.** Four copies of the Annual Progress Report on Five-Year Plan to Enhance Supplier and Workforce Diversity must be filed with the commission's filing clerk under the project number assigned by the Public Utility Commission's Central Records Office for that year's filings. A Telecommunications utility must obtain the project number by contacting Central Records. A copy of the report must also be sent to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and the African-American and Hispanic Caucus offices of the Texas Legislature.

(f) **Contents of the report.** The annual report filed with the commission in accordance with this section must be filed using the Workforce and Supplier Contracting Diversity form or an alternative format prescribed by the commission and must contain the following information:

(1) An illustration of the diversity of the telecommunications utility's workforce in the State of Texas at the time of the report. If the telecommunications utility is required to file an Equal Opportunity Report in accordance with §26.79 of this title (relating to Equal Opportunity Reports), a copy of that document may be attached to this report to satisfy the requirements of this paragraph.

(2) A description of the specific progress made under the workforce diversity plan filed in accordance with PURA §52.256(b), including:

(A) the specific initiatives, programs, and activities undertaken during the preceding year; and

(B) an assessment of the success of each of those initiatives, programs, and activities.

(3) An explanation of the telecommunications utility's level of contracting with small and historically underutilized businesses in the State of Texas.

(4) The extent to which the telecommunications utility has carried out its initiatives to facilitate opportunities for contracts or joint ventures with small and historically underutilized businesses.

(5) A description of the initiatives, programs, and activities the telecommunications utility will pursue during the next year to increase the diversity of its workforce and contracting opportunities for small and historically underutilized businesses in the State of Texas.

(g) This section may not be used to discriminate against any citizen on the basis of race, nationality, color, religion, sex, or marital status.

(h) This section does not create a new cause of action, either public or private.

(i) **Waiver**. A telecommunications utility that has less than sixteen employees in the State of Texas satisfies the requirements of this rule by completing subsection (f)(1) of this section.

§26.89. Nondominant Carriers' Obligations Regarding Information on Rates and Services.

(a) **Filing of tariff by nondominant carrier.** A nondominant carrier, including a nondominant carrier holding a certificate of operating authority or a service provider certificate of operating authority may, but is not required to file with the commission the information listed under paragraphs (1)-(3) of this subsection. If filed, such information must be updated and kept current at all times.

(1) A description of each type of telecommunications service provided;

(2) For each service listed in response to paragraph (1) of this subsection, the locations in the state by city in which service is originated or terminated. If a service is provided statewide, the carrier must specify either origination or termination; and

(3) A tariff, schedule, or list showing each rate for each service, product, or commodity offered by the nondominant carrier. A tariff must include a cover letter that lists each rule that relates to or affects a rate of the nondominant carrier, or a utility service, product, or commodity furnished by the nondominant carrier.

(b) **Annual tariff update.** By June 30 of each calendar year, each nondominant carrier that, during the previous 12 months, has not filed changes to the information specified by subsection (a) of this section must file with the commission a letter informing the commission that no changes have occurred. An uncertificated nondominant carrier that fails to file either this letter or the updates specified by subsection (a) of this section during the 12 month period ending on June 30 will no longer be registered with the commission.

(c) **Filing of nondominant carrier tariff by affiliate or trade association.** An affiliate of a nondominant carrier or trade association may file the information listed under subsection (a)(1)-(3) and (b) of this section on behalf of a nondominant carrier.

(1) For each filing, the nondominant carrier must authorize the affiliate of the nondominant carrier or trade association, via written affidavit filed with the commission, to file such information on its behalf.

(2) The authorization specified by paragraph (1) of this subsection may be included in the filing by the affiliate of the nondominant carrier or trade association.

(3) The filing by affiliate of the nondominant carrier or trade association must comply with the requirements of this section and other applicable law.

(d) **Registration requirement for nondominant carriers.** A nondominant carrier must comply with the registration requirements of §26.107 of this title (relating to Registration of Interexchange Carriers (IXCs), Prepaid Calling Services Companies (PPC), and Other Nondominant Telecommunications Carriers).

(e) **Exceptions.** A nondominant carrier:

(1) may, but is not required to, maintain on file with the commission each tariff, price list, or customer service agreement that governs the terms of providing service;

(2) may cross-reference its federal tariff in its state tariff if its intrastate switched access rates are the same as its interstate switched access rate;

(3) may withdraw a tariff, price list, or customer service agreement not required to be filed or maintained with the commission under this section if the nondominant carrier:

(A) files written notice of the withdrawal with the commission; and

(B) notifies each of its customers of the withdrawal and posts each current and applicable tariff, price list, or customer service agreement on its Internet website.

(4) is not required to obtain advance approval for a filing with the commission or a posting on the nondominant carrier's Internet website that adds, modifies, withdraws, or grandfathers a retail service or the rates, terms, or conditions of such a service;

(5) is not subject to any rule or regulatory practice that is not imposed on:

(A) a holder of a certificate of convenience and necessity serving the same area; or

(B) a deregulated company that:

(i) has 500,000 or more access lines in service at the time it becomes a deregulated company; or

(ii) serves an area also served by the nondominant telecommunications utility.

§26.111. Certificate of Operating Authority (COA) and Service Provider Certificate of Operating Authority (SPCOA) Criteria.

(a) **Scope and purpose.** This section applies to the certification of a person or entity to provide local exchange telephone service, basic local telecommunications service, and switched access service as holders of certificates of operating authority (COAs) and service provider certificates of operating authority (SPCOA) established in the Public Utility Regulatory Act (PURA), Chapter 54, Subchapters C and D.

(b) **Definitions.**

(1) Affiliate -- An affiliate of, or a person affiliated with, a specified person, is a person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the person specified.

(2) Annual Report -- A report that includes, at a minimum, the certificate holder's primary business telephone number, toll-free customer service number, email address, authorized company contact, regulatory contact, complaint contact, primary and secondary emergency contacts and operation and policy migration contacts which is submitted to the commission every calendar year. Each provided contact must include the contact's company title.

(3) Application – An application for a new COA or SPCOA certificate or an amendment to an existing COA or SPCOA certificate.

(4) Control -- The term control, including the terms controlling, controlled by and under common control with, means the power, either directly or indirectly through one or more affiliates, to direct or cause the direction of the management or policies of a person, whether through ownership of voting securities, by contract, or otherwise.

(5) Executive officer -- When used in reference to a person, means its president or chief executive officer, a vice-president serving as its chief financial officer, or a vice-president serving as its chief accounting officer, or any other officer of the person who performs any of the foregoing functions for the person.

(6) Facilities-based certification -- Certification that authorizes the certificate holder to provide service using its own equipment, unbundled network elements, or E9-1-1 database management associated with selective routing services.

(7) Permanent employee -- An individual that is fully integrated into the certificate holder's business. A consultant is not a permanent employee.

(8) Person -- An individual and any business entity, including a limited liability company, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, but does not include a municipal corporation.

(9) Principal -- A person or member of a group of persons that controls the person in question.

(10) Shareholder -- As context indicates and the applicable business entity requires, the legal or beneficial owner of any of the equity in a business entity, including , stockholders of corporations, members of limited liability companies and partners of partnerships.

(c) **Ineligibility for certification.**

(1) An applicant is ineligible for a COA or SPCOA if the applicant is a municipality.

(2) An applicant is ineligible for a COA if the applicant has not created a proper separation of business operations between itself and an affiliated holder of a certificate of convenience and necessity, as required by PURA §54.102 .

(3) An applicant is ineligible for an SPCOA if the applicant, and affiliates of the applicant, in the aggregate have more than 6.0% of the total intrastate switched access minutes of use as measured for the most recent 12-month period.

(4) The commission will not grant an SPCOA to a holder of a:

(A) CCN for the same territory; or

(B) COA for the same territory.

(d) **Application for COA or SPCOA certification.** A person or entity is prohibited from providing local exchange telephone service, basic local telecommunications service, or switched access service unless the person or entity obtains a certificate of convenience and necessity in accordance with §26.101 of this title (relating to Certificate of Convenience and Necessity Criteria), or a certificate of operating authority or a service provider certificate of operating authority in accordance with this section.

(1) An applicant for COA or SPCOA certification must demonstrate the capability of complying with this section. An applicant who obtains a COA or SPCOA, or who receives a certificate under this section must maintain compliance with this section.

(2) An application must be made on the form prescribed by the commission, verified by oath or affirmation, and signed by an executive officer of the applicant.

(3) Except where good cause exists to extend the time for review, the presiding officer must issue an order finding whether the application is deficient or complete within 20 days of filing. Deficient applications, including those without necessary supporting documentation, will be rejected without prejudice.

(4) While an application is pending, an applicant must inform the commission of any material change in the information provided in the application within five working days of any such change.

(5) Except where good cause exists to extend the time for review, the presiding officer will enter an order approving, rejecting, or approving with modifications, an application within 60 days of the filing of the application.

(6) While an application is pending, an applicant must respond to any request for information from commission staff within ten days after receipt of the request by the applicant.

(e) **Standards for granting certification to COA and SPCOA applicants.** The commission may grant a COA or SPCOA to an applicant that demonstrates eligibility in accordance with subsection (c) of this section, has the technical and financial qualifications required by this section, has the ability to meet the commission's quality of service requirements to the extent required by PURA and this title, and the applicant and its executive officers and principals do not have a history of violations of rules or misconduct such that granting the application would be inconsistent with the public interest. In determining whether to grant a certificate, the commission will consider whether the applicant has satisfactorily provided the information required under this section in the application.

(f) **Financial requirements.** To obtain COA or SPCOA certification, an applicant must demonstrate shareholders' equity as required by this subsection.

(1) To obtain facilities-based certification, an applicant must demonstrate shareholders' equity of not less than $100,000. To obtain resale-only or data-only certification, an applicant must demonstrate shareholders' equity of not less than $25,000.

(2) For the period beginning on the date of certification and ending one year after the date of certification, the certificate holder must not make any distribution or other payment to any shareholders or affiliates if, after giving effect to the distribution or other payment, the shareholders' equity of the certificate holder is less than the amount required by this paragraph. The restriction on distributions or other payments contained in this paragraph includes dividend distributions, redemptions and repurchases of equity securities, loans, or loan repayments to shareholders or affiliates.

(3) Shareholders' equity must be documented by an audited or unaudited balance sheet for the applicant's most recent quarter. The audited balance sheet must include the independent auditor's report. The unaudited balance sheet must include a sworn statement from an executive officer of the applicant attesting to the accuracy, in all material respects, of the information provided in the unaudited balance sheet.

(g) **Technical and managerial requirements.** To obtain COA or SPCOA certification, an applicant must have and maintain the technical and managerial resources and ability to provide continuous and reliable service in accordance with PURA, commission rules, and other applicable laws.

(1) To obtain facilities-based certification, an applicant must have principals, consultants or permanent employees in managerial positions whose combined experience in the telecommunications industry equals or exceeds five years. To obtain resale-only or data-only certification, an applicant must have principals or permanent employees in managerial positions whose combined experience in the telecommunications industry equals or exceeds one year.

(2) To support technical qualification, an applicant must provide the following documentation: the name, title, number of years of telecommunications or related experience, and a description of the experience for each principal, consultant and/or permanent employee that the applicant will rely upon to demonstrate the experience required by paragraph (1) of this subsection.

(3) An applicant must include the following in its application for COA or SPCOA certification:

(A) Any complaint history, disciplinary record and compliance record during the 60 months immediately preceding the filing of the application regarding: the applicant; the applicant's affiliates that provide utility-like services such as telecommunications, electric, gas, water, or cable service; the applicant's principals; and any person that merged with any of the preceding persons;

(i) The complaint history, disciplinary record, and compliance record must include information from any federal agency including the U.S. Securities and Exchange Commission; any self-regulatory

organization relating to the sales of securities, financial instruments, or other financial transactions; state public utility commissions, state attorney general officers, or other regulatory agencies in states where the applicant is doing business or has conducted business in the past including state securities boards or commissions, the Texas Secretary of State, Texas Comptroller's Office, and Office of the Texas Attorney General. Relevant information includes the type of complaint, status of complaint, resolution of complaint, and the number of customers in each state where complaints occurred.

(ii) The applicant may request to limit the inclusion of this information if it would be unduly burdensome to provide, so long as the information provided is adequate for the commission to assess the complaint history, disciplinary record, and compliance record of the applicant and the principals and affiliates of the applicant.

(iii) The commission may also consider any complaint information on file at the commission.

(B) A summary of any history of insolvency, bankruptcy, dissolution, merger, or acquisition of the applicant or any predecessors in interest during the 60 months immediately preceding the application;

(C) A statement indicating whether the applicant or the principals of the applicant are currently under investigation or have been penalized by an attorney general or any state or federal regulatory agency for violation of any deceptive trade or consumer protection laws or regulations; and

(D) Disclosure of whether the applicant or principals of the applicant have been convicted or found liable for fraud, theft, larceny, deceit, or violations of any securities laws, customer protection laws, or deceptive trade laws in any state.

(4) Quality of service and customer protection.

(A) The applicant must affirm that it will meet the commission's applicable quality-of-service standards as listed on the quality of service questionnaire contained in the application. The quality-of-service standards include E9-1-1 compliance and local number portability capability. Data-only providers are not subject to the requirements for E9-1-1 and local number portability compliance as applicable to switched voice services.

(B) The applicant must affirm that it is aware of and will comply with the applicable customer protection rules and disclosure requirements as set forth in Chapter 26, Subchapter B, of this title (relating to Customer Service and Protection).

(5) Limited scope of COAs and SPCOAs. If, after considering the factors in this subsection, the commission finds it to be in the public interest to do so, the commission may:

(A) Limit the geographic scope of the COA.

(B) Limit the scope of an SPCOA's service to facilities-based, resale-only, data-only, geographic scope, or some combination of the preceding list.

(h) **Certificate Name.** All local exchange telephone service, basic local telecommunications service, and switched access service provided under a COA or SPCOA must be provided in the name under which certification was granted by the commission. The commission will grant the COA or SPCOA certificate in only one name.

(1) The applicant must provide the following information from its registration with the Texas Secretary of State or registration with another state or county, as applicable:

(A) Form of business being registered (*e.g.*, corporation, company, partnership, sole proprietorship, etc.);

(B) Any assumed names;

(C) Certification or file number; and

(D) Date business was registered.

(2) Business names must not be deceptive, misleading, inappropriate, confusing or duplicative of existing name currently in use or previously approved for use by a certificated telecommunications provider (CTU).

(3) Any name in which the applicant proposes to do business will be reviewed for compliance with paragraph (2) of this subsection. If the presiding officer determines that any requested name does not meet the requirements of paragraph (2) of this subsection, the presiding officer must notify the applicant that the requested name may not be used by the applicant. The applicant will be required to amend its application to provide at least one suitable name to be certificated.

(i) **Amendment of a COA or SPCOA Certificate.**

(1) A person or entity granted a COA or SPCOA in accordance with this section must file an application to amend a COA or an SPCOA certificate in a commission approved format to:

(A) Change the corporate name or assumed name of the certificate holder.

(i) Name change amendments may be granted via administrative approval if the holder is in compliance with applicable commission rules and no hearing is requested.

(ii) Commission staff will review any name in which the applicant proposes to do business. If staff determines that any requested name is deceptive, misleading, vague, inappropriate, or duplicative, it must notify the applicant that the requested name is prohibited for use by the applicant. An applicant is required to provide at least one suitable name or the amendment will be denied by the presiding officer.

(B) Change the geographic scope of a COA or an SPCOA.

(C) Sell, transfer, assign, or lease a controlling interest in the COA or SPCOA or sell, transfer or lease a controlling interest in the entity holding the COA or the SPCOA. An application for this type of amendment must:

(i) be filed at least 60 days prior to the occurrence of the transaction;

(ii) be jointly filed by the transferor and transferee;

(iii) comply with the requirements for certification; and

(iv) comply with applicable commission rules.

(D) Change of type of provider from resale-only, facilities-based only or data-only on a SPCOA certificate.

(E) Discontinuation of service and relinquishment of certificate, or discontinuation of an optional service by a deregulated company holding a certificate of operating authority or an exempt carrier.

(i) A deregulated company holding a certificate of operating authority or an exempt carrier must provide the information in subclauses (I)-(III) of this clause for the discontinuation of service and relinquishment of its certificate. The requirements for the discontinuation of optional services do not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier.

(I) Certification that the carrier will send customers whose service is being discontinued a notification letter providing a minimum of 61 days of notice of termination of service and clearly stating the date of termination of service;

(II) A statement regarding the disposition of customer credits and deposits; and

(III) Certification that the carrier will comply with §26.24 of this title (relating to Credit Requirements and Deposits).

(ii) A carrier that does not meet the criteria of clause (i) of this subparagraph must comply with subsections (m) and (n) of this section to discontinue service, relinquish a certificate, or discontinue an optional service.

(2) If the application to amend the COA or SPCOA certificate is for a corporate restructuring, a change in internal ownership, or an internal change in controlling interest, the applicant may file an abbreviated amendment application, unless the ownership or controlling interest involves an uncertificated company, significant changes in management personnel, or changes to the underlying financial qualifications of the certificate holder that were previously approved by the commission. If commission staff cannot determine continued compliance with the applicable substantive rules based on the information provided on the abbreviated amendment application, then a full amendment application must be filed by the applicant.

(3) When a certificate holder acquires or merges with another certificate holder, other than a CCN holder, the acquiring entity must file a notice within 30 calendar days of the closing of the acquisition or merger in a project established by staff. Staff will have ten working days to review the notice and determine whether a full amendment application will be required. If staff has not filed, within ten working days, a request to docket the proceeding and determination that a full amendment application is required, a notice of approval may be issued. Notice to the commission must include but not be limited to:

(A) A joint filing statement;

(B) Certificated entity names, certificate numbers, contact information, and statements of compliance; and

(C) An affidavit from each certificated entity attesting to compliance with COA or SPCOA certification requirements, as applicable.

(4) No later than five working days after filing an application or amendment with the commission, the applicant must provide a copy of the application or amendment to the Commission on State Emergency Communications and, in accordance with paragraph (3) of this subsection, notice to all affected 9-1-1 administrative entities. The applicant may provide the amendment application and notice via electronic mail.

(5) If the application to amend requests any change other than a name change, the factors as set forth in subsections (c) and (d) of this section may be considered by the commission in determining whether to approve an amendment to a COA or SPCOA.

(j) **Non-use of certificates.** Applicants must use their COA or SPCOA certificates expeditiously.

(1) A certificate holder that has discontinued providing service for a period of 12 consecutive months after the date the certificate holder has initially begun providing service must file an affidavit on an annual basis attesting that it continues to possess the required technical and financial resources necessary to provide the level of service proposed in its initial application.

(2) A certificate holder that has not provided service within 24 months of being granted the certificate by the commission may have its certificate suspended or revoked.

(k) **Renewal of certificates.** Each COA and SPCOA holder must file with the commission a renewal of its certification once every ten years. The commission may, prior to the ten year renewal requirement, require each COA and SPCOA holder to file a renewal of its certification.

(1) The certification renewal must include:

(A) the certificate holder's name;

(B) the certificate holder's address; and

(C) the most recent version of the annual report the commission requires the certificate holder to submit to comply with subsection (l)(1) of this section, to the extent required by PURA and this title.

(2) A certification renewal must be filed on or before June 1, 2014, and every ten years thereafter.

(3) COA or SPCOA holders will have an automatic extension of the filing deadline until October 1 of each reporting year to comply with paragraph (1) of this subsection. Commission staff will send three notices to each COA and SPCOA holder that has not submitted its certification renewal by June 1. The first notice will be sent on or before July 1, the second notice will be sent on or before August 1, and the third notice will be sent on or before September 1. Failure to send any of these notices by commission staff or failure to receive any of these notices by a COA or SPCOA holder must not affect the requirement to renew a certificate under this section by October 1 of the renewal period.

(4) Failure to timely file the annual renewal required in paragraph (1) of this subsection on or before October 1 of each reporting year will automatically render the certificate of the COA or SPCOA invalid and therefore no longer in compliance with PURA §54.001.

(5) COA or SPCOA holders that continue to provide regulated telecommunications services under an invalid COA or SPCOA may be subject to administrative penalties and other enforcement actions.

(6) A certificate holder whose COA or SPCOA certificate is invalid may obtain a new certificate only by complying with the requirements prescribed for obtaining an original certificate.

(l) **Reporting Requirements.**

(1) Each COA or SPCOA holder must provide and maintain accurate contact information via the annual report to the extent required by PURA and this title. At a minimum, the COA or SPCOA holder must maintain a current regulatory contact person, complaint contact person, primary and secondary emergency contact, operation and policy migration contact, business physical and mailing address, primary business telephone number, toll-free customer service number, and primary email address. The COA or SPCOA holder must submit the required information in the manner established by the commission.

(2) The applicable annual report is due on or before April 30 of each calendar year. The COA or SPCOA holder must electronically submit the required information in a manner established by the commission.

(3) When terminating or disconnecting service to another CTU, a COA or an SPCOA holder must file a copy of the termination or disconnection notice with the commission not later than two working days after the notice is sent to the CTU. The service termination or disconnection notice must be filed in a project established for that purpose.

(4) COA and SPCOA holders must file a notice of the initiation of a bankruptcy in a project number established for that purpose. The notice must be filed not later than five working days after the filing of the bankruptcy petition. The notice of bankruptcy must also include, at a minimum, the following information:

(A) The name of the certificated company that is the subject of the bankruptcy petition, the date and state in which bankruptcy petition was filed, type of bankruptcy such as Chapter 7, 11, or 13, and whether the bankruptcy is voluntary or involuntary, the bankruptcy case number; and

(B) The number of affected customers, the type of service provided to the affected customers, and the name of each provider of last resort associated with the affected customers.

(5) **Reports.**

(A) A certificate holder must file all reports to the extent required by PURA and this title, including §26.51 of this title (relating to Reliability of Operations of Telecommunications Providers); §26.76 of this title (relating to Gross Receipts Assessment Report); §26.80 of this title (relating to Annual Report on Historically Underutilized Businesses); §26.85 of this title (relating to Report of Workforce Diversity and Other Business Practices); §26.89 of this title (relating to Nondominant Carriers' Obligations Regarding Information on Rates and Services); §26.465 of this title (relating to Methodology for Counting Access Lines and Reporting Requirements for

Certified Telecommunications Providers); and §26.467 of this title (relating to Rates, Allocation, Compensation, Adjustments and Reporting).

(B) An amendment for certification must include a copy of the applicant's most recent tariff that has been approved by the commission in accordance with §26.207 of this title (relating to Form and Filing of Tariffs), §26.208 of this title (relating to General Tariff Requirements), and other commission rules as applicable or specified by those provisions. A tariff that has not been approved but is currently under review by the commission may be used to satisfy this requirement.

(i) A control number for the project associated with the applicant's most recently approved tariff or tariff that is currently under review by the commission may be provided as an alternative to providing a copy.

(ii) An entity subject to §26.89 of this title (Relating to Nondominant Carriers' Obligations Regarding Information on Rates and Services) may, but is not required to, comply with this paragraph.

(m) **Standards for cessation of operations and relinquishment of certification.** A COA or SPCOA holder may cease operations in the state only if authorized by the commission in accordance with this subsection. A COA or SPCOA holder that ceases operations and relinquishes its certification must comply with PURA §54.253. This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier.

(1) Before the certificate holder ceases operations, it must give notice of the intended action to the commission, each affected customer, the Commission on State Emergency Communications (CSEC), each affected 9-1-1 administrative entity, the Office of Public Utility Counsel (OPUC), each wholesale provider of telecommunications facilities or services from which the certificate holder purchased facilities or services, the Texas Comptroller of Public Accounts, the Texas Secretary of State and the administrator of the Texas Universal Service Fund.

(A) The notification letter must clearly state the intent of the certificate holder to cease providing service.

(B) The notification letter must provide each customer a minimum of 61 days of notice of termination of service, and the date of the termination of service must be clearly stated in the notification letter.

(C) The notification letter must inform each customer of the carrier of last resort or make other arrangements to provide service as approved by each customer.

(2) A COA or SPCOA holder that intends to cease operations must file with the commission an application to cease operations and relinquish its certificate, and provide a copy of the application to CSEC. The application must provide the following information:

(A) Name, address, and phone number of the certificate holder;

(B) COA or SPCOA certificate number being relinquished;

(C) The commission control number in which the COA or SPCOA was granted;

(D) A description of the areas in which service will be discontinued and whether basic local telecommunications service is available from other certificate holders in these areas;

(E) A description of any contractual arrangements with customers that will not be honored, as a consequence of the cessation of operations; and

(F) A statement regarding the disposition of customer credits and deposits, and a sworn statement stating the authority to relinquish certification, that proper notice of the relinquishment has been provided to all customers, and that the information provided in the application is true and correct.

(3) All customer deposits and credits must be returned within 60 days of notification to cease operations and relinquish certification.

(4) Any switchover fees that will be charged to affected customers as a consequence of the cessation of operations must be paid by the certificate holder relinquishing the certificate.

(5) Commission approval of the cessation of operations does not relieve the COA or SPCOA of obligations to its customers under contract or other applicable law.

(n) **Standards for discontinuing optional services.** A COA or SPCOA holder discontinuing an optional service must comply with PURA §54.253. This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier.

(1) The COA or SPCOA holder must file an application with the commission to discontinue optional services, which must provide the following information:

(A) Name, address, and phone number of the certificate holder;

(B) COA or SPCOA certificate number being amended;

(C) The commission control number in which the COA or SPCOA was granted;

(D) A description of the optional services that will be discontinued and whether such services are available from other certificate holders in the areas served by the certificate holder;

(E) A description of any contractual arrangements with customers that will not be honored, as a consequence of the discontinuation of optional services; and

(F) A sworn statement stating the authority to discontinue service options, that proper notice of the discontinuation of service has been provided to all customers, and that the information provided in the amended application is true and correct.

(2) Notification to each customer receiving optional services is required, and must comply with the following requirements:

(A) The notification letter must clearly state the intent of the certificate holder to cease an optional service and a copy of the letter must be provided to the commission and OPUC.

(B) The notification letter must give customers a minimum of 61 days of notice of the discontinuation of optional services.

(3) All customer deposits and credits associated with a discontinued optional service must be returned within 30 days of the discontinuation.

(4) The certificate holder must maintain the optional services until it has obtained commission authorization to cease the optional services.

(5) If the amendment application requests any change other than a name change, the factors as set forth in subsections (c) and (d) of this section may be considered by the commission in determining whether to approve an amendment to a COA or an SPCOA.

(o) **Revocation or suspension.** A certificate granted in accordance with this section is subject to amendment, suspension, or revocation by the commission for violation of PURA or commission rules or if the commission determines that holder of the certificate does not meet the requirements under this section to the extent required by PURA and this title. A suspension of a COA or an SPCOA certificate requires the cessation of all activities associated with obtaining new customers in the state of Texas for a product or service that require a COA or an SPCOA. A revocation of a COA or SPCOA certificate requires the cessation of activities in the state of Texas that require a COA or an SPCOA in accordance with commission order. The commission may also impose an administrative penalty on a person for a violation of PURA or commission substantive rules. Commission Staff or any affected person may bring a complaint seeking to amend, suspend, or revoke a COA or an SPCOA certificate. Grounds for initiating an investigation that may result in the suspension or revocation include the following:

(1) Non-use of approved certificate for a period of 24 months, without re-qualification prior to the expiration of the 24-month period;

(2) Providing false or misleading information to the commission;

(3) Failure to meet financial obligations on a timely basis, or the inability to obtain or maintain the financial resources needed to provide adequate service;

(4) Violation of any state law applicable to the certificate holder that affects the certificate holders' ability to provide telecommunications services;

(5) Failure to meet commission reporting requirements to the extent required by PURA and this title;

(6) Engaging in fraudulent, unfair, misleading, deceptive, or anti-competitive practices or unlawful discrimination in providing telecommunications service;

(7) Switching, or causing a customer's telecommunications service to be switched, without first obtaining the customer's permission;

(8) Billing an unauthorized charge, or causing an unauthorized charge to be billed, to a customer's telecommunications service bill;

(9) Failure to maintain financial resources in accordance with subsection (f)(1) of this section;

(10) A pattern of not responding to commission inquiries or customer complaints in a timely fashion;

(11) Suspension or revocation of a registration, certification, or license by any state or federal authority;

(12) Conviction of a felony by the certificate holder, a person controlling the certificate holder, or principal employed by the certificate holder, or any crime involving theft, fraud, or deceit related to the certificate holder's service;

(13) Failure to serve as a provider of last resort if required to do so by the commission;

(14) Failure to provide required services to customers under the federal or Texas Universal Service Fund;
(15) Failure to comply with the rules of the federal or Texas Universal Service Fund; and
(16) Violations of PURA or any commission rule or order applicable to the certificate holder.

§26.123. Caller Identification Services.

(a) **Application**. Unless the context clearly indicates otherwise, this section applies to all telecommunications utilities and providers of commercial mobile radio services otherwise herein referred to as "Providers of Caller ID." This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Regulatory Act (PURA) §52.154.

(b) **Caller identification services ("caller ID").**

(1) **Application.** This subsection does not apply to:

(A) an identification service that is used within the customer's own system, including a central office based PBX-type system;

(B) information that is used on a public agency's emergency telephone line or on a line that receives the primary emergency telephone number (9-1-1, or E9-1-1);

(C) information passed between telecommunications utilities, enhanced service providers, or other entities that is necessary for the set-up, processing, transmission, or billing of telecommunications or related services;

(D) information provided in compliance with applicable law or legal process; or

(E) an identification service provided in connection with a "700," "800," "888," "900," or similar access code telecommunications service

(2) **Caller ID blocking.**

(A) Per-call blocking. All providers of caller ID must provide per-call blocking at no charge to each telephone subscriber in the specific area in which caller ID is offered.

(B) Per-line blocking.

(i) A provider of caller ID may offer and provide per-line blocking to any customer at any time without any notification to the commission by the customer or the provider. The telecommunications provider is encouraged to notify the customer by mail of the effective date that per-line blocking will be instituted.

(ii) All providers of caller ID, except commercial mobile radio service providers, must provide per-line blocking at no charge to a particular customer in the specific area in which caller ID is offered if the commission receives from the customer written certification that the customer has a compelling need for per-line blocking. Commercial mobile radio service providers must provide per-line blocking to a particular customer in the specific area in which caller ID is offered if the commission receives from the customer written certification that the customer has a compelling need for per-line blocking.

(I) When a customer requests per-line blocking through the commission, the provider of caller ID must notify the customer by mail of the effective date that per-line blocking will be instituted.

(II) The commission may prescribe and assess fees and assessments from providers of caller ID in an amount

sufficient to cover the additional expenses incurred by the commission in implementing the customer certification provisions of this clause.

(III) Reports, records, and information received under this clause by the commission or by a provider of caller ID are confidential and may be used only for the purposes of administering this subparagraph.

(iii) A provider of caller ID may assess a service order charge relating to administrative costs to reinstate per-line blocking on a line, if the customer initially received the per-line block at no charge and then later asked the provider to remove it. The service charge authorized by this clause must be approved by the commission except where the provider of Caller ID is a commercial mobile radio service provider.

(3) **Blocking failures and provider responsibilities.** When a provider of caller ID service to a customer originating a call becomes aware of a failure to block the delivery of calling party information from a line equipped with per-line blocking or per-call blocking, and the caller had attempted to block the call, it must report such failure to the Caller ID Consumer Education Panel, the commission, and the affected customer if that customer did not report the failure. The provider must report such failure to the commission by contacting the commission liaison to the panel. A reasonable effort must be made to notify the affected customer within 24 hours after the provider becomes aware of such failure.

(4) **Public policy statement.** A provider of caller ID services must inform all of its telephone subscribers of how the subscriber can unblock a line equipped with per-line blocking.

(5) **Filing of caller ID materials.** A provider of caller ID services must file all caller ID materials in Project 14505.

(c) **Usage of calling party information in other services.** A dominant certificated telecommunications utility may not use calling party information to allow the called party to contact the calling party, when that calling party had indicated a desire for privacy in the initial call by blocking the delivery of his or her calling party information through the use of either a per-call or per-line blocking option, as those terms are defined in §26.5 of this title (relating to Definitions).

§26.127. Abbreviated Dialing Codes.

(a) **Code assignments.** The following abbreviated dialing codes may be used in Texas:
- (1) 211 -- Community Information and Referral Services;
- (2) 311 -- Non-Emergency Governmental Service;
- (3) 411 --
  - (A) Directory Assistance; and
  - (B) Directory Assistance Call Completion;
- (4) 511 -- Traffic and Transportation Information;
- (5) 611 -- Repair Service;
- (6) 711 -- Telecommunications Relay Service;
- (7) 811 -- One Call Excavation Notification; and
- (8) 911 -- Emergency Service.

(b) **Use only as directed.** A certificated telecommunications utility (CTU) within the State of Texas may assign or use N11 dialing codes only as directed by the commission.

(c) **Limitations.** The following limitations apply to a CTU's use of N11 dialing codes for internal business and testing purposes:
- (1) use may not interfere with the assignment of such numbers by the FCC and the North American Numbering Plan (NANP); and
- (2) use of an N11 dialing code must be discontinued on short notice if the number is reassigned on a statewide or nationwide basis.

(d) **211 service.**
- (1) **Application.** This subsection applies to the assignment, provision, and termination of 211 service.
- (2) **Definitions.** The following words and terms, when used in this subsection, have the following meanings unless the context indicates otherwise:
  - (A) **Alliance of Information and Referral Systems (AIRS)** -- A professional organization whose mission is to unite and serve the field and to advance the profession of information and referral as a vital means of bringing people and services together. AIRS has developed national quality standards and methods of evaluating information and referral services.
  - (B) **Area Information Center (AIC)** -- An entity that serves as regional coordinator for health and human services information for a specified geographical area or region.
  - (C) **Community resource** -- A for profit or nonprofit resource that provides health or human services in a designated geographic area.
  - (D) **Information and referral service** -- A service whose primary purpose is to maintain information about human service resources in the community and to link people who need assistance with appropriate service providers or to supply descriptive information about the agencies or organizations which offer services.

(E) **Selective routing** -- The feature provided with 211 service by which 211 calls are automatically routed to the 211 answering point for serving the place from which the call originates.

(F) **Texas Information and Referral Network (Texas I & R Network)** -- A program of the Health and Human Services Commission (HHSC) that is responsible for the development, coordination, and implementation of the statewide information and referral network.

(G) **211 answering point** -- An AIC that:

(i) provides 24 hour, seven day a week operations;

(ii) is assigned by HHSC the responsibility to receive 211 calls;

(iii) serves the area or region designated by HHSC; and

(iv) performs the roles and responsibilities of an AIC.

(H) **211 service** -- A telecommunications service provided by a CTU to a designated area information center through which the end user of a public phone system can access services providing free information and referrals regarding community service organizations.

(3) **Role and responsibilities of the Texas Health and Human Services Commission (HHSC).**

(A) To designate an AIC as a 211 provider for a particular geographical area;

(B) HHSC and the AICs educate the populace about the use of 211 service from its inception through termination;

(C) HHSC is responsible for dispute resolution should a conflict regarding the selection of an AIC occur; and

(D) HHSC may terminate an AIC's designation for good cause and is responsible for ensuring prompt and efficient selection of a new AIC for continuation of service.

(4) **Use of the 211 system.**

(A) 211 calls may not be completed over the 311 or 911 networks or use the 311 or 911 databases.

(B) The 211 network must not be used for commercial advertisements.

(5) **Privacy policy.** To preserve the privacy of callers who wish to use the 211 service anonymously, an AIC which uses Automatic Number Identification (ANI), Automatic Location Identification (ALI) service or other equivalent non-blockable information-gathering features for the provision of 211 service must establish an in-house procedure that is consistent with the AIRS national standards and the standards set forth by HHSC that allows access to the 211 service while honoring the caller's call and line-blocking preferences, or caller anonymity.

(6) **Fee.** Neither an AIC nor a CTU may charge end users a fee on a per-call or per-use basis for using the 211 system.

(e) **311 service.**

(1) **Scope and purpose.** This subsection applies to the assignment, provision, and termination of 311 service. Through this subsection, the commission strives to strengthen the 911 system by alleviating congestion on the 911 system through the establishment of a framework for governmental entities to implement a 311 system for non-emergency police and other governmental services.

(2) **Definition.** The term "governmental entity" when used in this subsection means any county, municipality, emergency communication district, regional planning commission, appraisal district, or any other subdivision or district that provides, participates in the provision of, or has authority to provide fire-fighting, law enforcement, ambulance, medical, 911, or other emergency service as defined in Texas Health & Safety Code §771.001, as may be subsequently amended.

(3) A CTU must have a commission-approved application to provide 311 service.

(4) **Requirements of application by CTU.**

(A) Applications, tariffs, and notices filed under this subsection must be written in plain language, must contain sufficient detail to give customers, governmental entities, and other affected parties adequate notice of the filing, and must conform to the requirements of §26.209 of this title (relating to New and Experimental Services) or §26.211 of this title (relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges), whichever is applicable.

(B) A CTU must provide a copy of the text of the proposed notice to notify the public of the request for 311 service with the filing of an application for regulatory approval of the CTU's provision of 311 service.

(C) No application for 311 service allowing the governmental entity to charge its citizens a fee on a per-call or per-use basis for using the 311 system must be approved.

(D) All applications for 311 service must include the governmental entity's plan to educate its populace about the use of 311 at the inception of 311 service and its plan to educate its populace at the termination of the governmental entity's provision of 311 service.

(5) **Notice.** The presiding officer will determine the appropriate level of notice to be provided and may require additional notice to the public.

(A) The CTU must file with the commission a copy of the text of the proposed notice to notify the public of the request for 311 service and the filing of an application for regulatory approval of the CTU's provision of 311 service. This copy of the proposed notice must be filed with the commission not later than ten days after the CTU receives the 311 service request; and

(B) The proposed notice must include the identity of the governmental entity, the geographic area to be affected if the new 311 service is approved, and the following language: "Persons who wish to comment on this application should notify the commission by (specified date, 30 days after notice is published in the *Texas Register*). Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the PUCT Consumer Protection Division at (512) 936-7120 or toll free at (888) 782-8477. Hearing- and speech-impaired individuals may contact the commission through Relay Texas at 1-800-735-2989."

(6) A CTU is authorized to provide 311 service only to governmental entities.

(7) A 311 service request must initiate the six-month deadline to "take any necessary steps to complete 311 calls" as required by the Federal Communications Commission's Order *In the Matter of the Use of N11 Codes and Other Abbreviated*

Dialing Arrangements, CC Docket No. 92-105, FCC 97-51, 12 F.C.C.R. 5572 (February 19, 1997).

(8) 311 calls must not be completed over the 911 network or use the 911 database.

(9) The 311 network must not be used for commercial advertisements.

(10) To preserve the privacy of callers who wish to use the governmental entity's non-emergency service anonymously, a CTU which uses Automatic Number Identification (ANI) service, Automatic Location Identification (ALI) service or other equivalent non-blockable information-gathering features for the provision of 311 service must establish a non-abbreviated phone number that will access the same non-emergency police and governmental services as the 311 service while honoring callers' call- and line-blocking preference. When publicizing the availability of the 311 service, the governmental entity must inform the public if its 311 service has caller or number identification features, and must publicize the availability of the non-abbreviated phone number that offers the same service with caller anonymity. When a CTU uses a Caller Identification service or other equivalent features to provide 311 service, relevant provisions of the commission's substantive rules and of the Public Utility Regulatory Act apply.

(11) The commission has the authority to limit the use of 311 abbreviated dialing codes to applications that are found to be in the public interest.

(12) The commission has the authority to decide which governmental entity must provide 311 service when there are conflicting requests for concurrent 311 service for the same geographic area, to the extent that negotiations between or among the affected governmental entities fail. The commission will consider the following factors in determining conflicting requests for 311 service:

(A) the nature of the service, including the proposed public education portion to be provided by the governmental entity; and

(B) the potential magnitude of use of the requested 311 service, such as the number of residents served by the governmental entity and their potential frequency of access to the governmental agencies wishing to use the 311 service.

(13) When termination of 311 service is desired, the CTU must file a notice of termination with the commission that contains:

(A) proposed notice to the affected area of the termination of 311 service; and

(B) the program to educate the affected public of the termination of 311 service.

(14) The commission, after receiving the CTU's proposed notice of termination of 311 service and approving the proposed notice through an administrative review, will cause the approved notice to be published in the *Texas Register*.

(f) **811 service.**

(1) **Scope and purpose.** This subsection applies to the assignment, provision, and termination of 811 service. Through this subsection, the commission implements the Federal Communications Commission's requirements in *Use of N11 Codes and Other Abbreviated Dialing Arrangements*, Sixth Report and Order, CC Docket No. 92-105, FCC 05-59 (Mar. 14, 2005), that designated 811 as the national abbreviated dialing code to be used by state One Call notification systems for providing advanced notice of excavation activities to underground facility operators in

compliance with the Pipeline Safety Improvement Act of 2002. The commission intends to reduce the possibility of disruptions to underground facilities by implementing 811 service. Implementation of 811 service will facilitate advance notice by excavators of planned excavations to facility operators, allowing facility operators to mark and prepare their facilities before excavation.

(2) **Authority.** Authority for One Call Excavation Notification resides with the Texas Underground Facility Notification Corporation (TUFNG), doing business as One Call Board of Texas and in accordance with Chapter 251 of the Texas Utilities Code.

(3) **Customer Responsibility.** TUFNG is a customer of 811 service. Telecommunications providers whose 811 service is regulated by the commission may require TUFNG to provide 60-days written notice for any call center number additions or changes to ensure timely numbered translations by the 811 service providers.

(4) **Limitations of liability.** Telecommunications providers whose 811 service is regulated by the commission may limit their liability for the provision of 811 service through the inclusion of liability limitations in their tariffs. Liability for gross negligence or willful misconduct cannot be limited.

§26.128. Telephone Directories.

(a) **Application.** The provisions of this section applies to all telephone directory providers to the extent outlined by this section. This section does not apply to a deregulated company holding a certificate of operating authority, or to an exempt carrier that meets the criteria of Public Utility Regulatory Act (PURA) §52.154. For purposes of this section, the term "a private for-profit publisher" means a publisher, other than a telecommunications utility or its affiliate, of a telephone directory that contains residential listings and is distributed to the public at minimal or no cost.

(b) **Telephone directory requirements for all providers.** A private, for-profit publisher, and a telecommunications utility or affiliate of a telecommunications utility that publishes a residential telephone directory must comply with the following requirements:

(1) A telephone directory must contain a listing of each toll-free and local telephone number for each of the following:
  (A) state agencies;
  (B) state public services; and
  (C) elected state officials who represent all or part of the geographical area for which the directory contains listings.

(2) The directory must include the information required in paragraph (1) of this subsection from the most current edition of the Capitol Complex Telephone System Directory prepared and issued by the Department of Information Resources and those modifications to the Capitol Complex Telephone System Directory that are available upon request from the Department of Information Resources.

(3) All publishers must contact the Department of Information Resources in writing to determine which issue of the Capitol Complex Telephone System Directory is most current and to obtain the modifications referred to in paragraph (2) of this subsection. The Department of Information Resources will respond within 30 days of receiving the request.

(4) The listings required by paragraph (1) of this subsection:
  (A) may be located at the front of the directory or, if not located at the front of the directory, must be referenced clearly on the inside page of the cover or on the first page following the cover before the main listing of residential and business telephone numbers;
  (B) must be labeled "GOVERNMENT OFFICES - STATE" in 24 point type;
  (C) must be bordered or shaded in such a way, on the three unbound sides with a border, that will distinguish the state listings from the other listings;
  (D) must be included in the directory at no cost to the agency or official;
  (E) must comply with the categorization developed by the Records Management Interagency Coordinating Council. The categorization must be available upon request from the Department of Information Resources. The listings must be arranged in the following manner:
    (i) alphabetically by subject matter of state agencies; or
    (ii) alphabetically by agency and public service name;
  (F) must include the telephone number for state of Texas government information: (512) 463-4630.

(c) **Private for-profit publisher.** Any private for-profit publisher that publishes a residential telephone directory must include in the directory a prominently displayed toll-free number and Internet mail address, established by the commission, through which a person may order a form to request to be placed on the Texas no-call list in order to avoid unwanted telemarketing calls.

(d) **Additional requirement for telecommunications utilities or affiliates that publish telephone directories.**

(1) A telecommunications utility or an affiliate of that utility that publishes a business telephone directory that is distributed to the public must publish a listing of each toll-free and local telephone number of each elected official who represents all or part of the geographical area for which the directory contains listings.

(2) A telecommunications utility or an affiliate of that utility that publishes and causes to be distributed to the public a residential or business telephone directory must prominently list in the directory the following information: "The Specialized Telecommunications Assistance Program (STAP) provides financial assistance to help Texas residents with disabilities purchase basic specialized equipment or services needed to access the telephone network. For more information, contact the Texas Department of Health and Human Services at (512) 438-4880. Hearing and speech-impaired individuals may contact the Texas Department of Health and Human Services through Relay Texas at 1-800-735-2989 or https://www.hhs.texas.gov/services/disability/deaf-hard-hearing/stap-services. This program is open to all individuals who are residents of Texas and have a disability."

(e) **Requirements for telecommunications utilities found to be dominant**. This subsection applies to a telecommunications utility found to be dominant as to local exchange telephone service or affiliate of a telecommunications utility that publishes a directory on behalf of the telecommunications utility.

(1) **Annual publication.** Telephone directories must be published every calendar year. Except for customers who request that information be unlisted, directories must list the names, addresses, and telephone numbers of all customers receiving local phone service, including customers of other certificated telecommunications utilities (CTUs) in the geographic area covered by that directory. Numbers of pay telephones need not be listed.

(2) **Distribution.** Upon issuance, a copy of each directory must be distributed at no charge for each customer access line served by the telecommunications utility in the geographic area covered by that directory and, if requested, one extra copy per customer access line must be provided at no charge. Notwithstanding any other law, a telecommunications provider or telecommunications utility may publish on its website a telephone directory or directory listing instead of providing for general distribution to the public of printed directories or listings. A provider or utility that publishes a telephone directory or directory listing electronically must provide a print or digital copy of the directory or listing to a customer on request. If a provider or utility chooses to publish its telephone directory or directory listings

electronically, it must notify its customers that the first print or digital copy requested by a customer in each calendar year will be provided at no charge to the customer. A printed or digital copy of each directory must be furnished to the commission. A telecommunications utility must also distribute copies of directories in accordance with any agreement reached with another CTU.

(3) **Front cover requirements**. The name of the telecommunications utility, an indication of the area included in the directory, and the month and the year of issue must appear on the front cover. Information pertaining to emergency calls such as for the police and fire departments must appear conspicuously in the front part of the directory pages.

(4) **Required instructions**. The directory must contain instructions concerning:

(A) placing local and long distance calls on the network of the telecommunications utility for which the directory is issued;

(B) calls to the telecommunications utility's repair and directory assistance services, and locations; and

(C) telephone numbers of the business offices of the telecommunications utility as may be appropriate to the area served by the directory.

(5) **Customer addresses.** At the customer's election the directory must list either the customer's street address, a post office box number, or no address. A charge may be imposed upon those customers who desire more than one address listing.

(f) **References to other sections relating to directory notification.** The requirements of this section are in addition to the requirements of the provisions referenced in paragraphs (1)-(4) of this subsection, and other law.

(1) Section 26.29 of this title (relating to Prepaid Local Telephone Service (PLTS)) concerning consumer education;

(2) Section 26.31 of this title (relating to Disclosures to Applicants and Customers) concerning information to customers;

(3) Section 26.121 of this title (relating to Privacy Issues) concerning notice of number delivery over 800, 888, and other toll-free prefixes and 900 services;

(4) Section 26.130 of this title (relating to Selection of Telecommunications Utilities) concerning notice of customer rights.

(g) **Additional requirements.** The following requirements apply to telecommunications utilities found to be dominant as to local exchange telephone service or its affiliate that publishes a directory on behalf of such telecommunications utility.

(1) **Directory assistance.** Each telecommunications utility must list each customer with its directory assistance within 72 hours after service connection, except those numbers excluded from listing in subsection (e)(1) of this section, to facilitate the provision of the requested telephone numbers based on customer names and addresses by the directory assistance operators.

(2) **Non-assigned numbers.** All non-assigned telephone numbers in central offices serving more than 300 customer access lines must be intercepted unless otherwise approved by the commission.

(3) **Disconnected numbers.** Disconnected residence telephone numbers must not be reassigned for 30 days and disconnected business numbers must not be reassigned,

unless requested by the customer, for 30 days or the life of the directory, whichever is longer, unless no other numbers are available to provide service to new customers.

(4) **Incorrect listings.** If a customer's number is incorrectly listed in the directory and if the incorrect number is a working number and if the customer to whom the incorrect number is assigned requests, the number of the customer to whom the incorrect number is assigned must be changed at no charge. If the incorrect number is not a working number and is a usable number, the customer's number must be changed to the listed number at no charge if requested.

(5) **Changing telephone numbers to a group of customers.** When additions or changes in plant or changes to any other CTU's operations necessitate changing telephone numbers to a group of customers, at least 30 days' written notice must be given to all customers so affected even though the addition or changes may be coincident with a directory issue.

§26.130. Selection of Telecommunications Utilities.

(a) **Purpose and Application.**

(1) **Purpose.** The provisions of this section are intended to ensure that all customers in this state are protected from an unauthorized change in a customer's local or long-distance telecommunications utility.

(2) **Application.** This section, including any references in this section to requirements in 47 Code of Federal Regulations (C.F.R.) Subpart K (entitled "Changing Long Distance Service"), applies to a "telecommunications utility," as that term is defined in §26.5 of this title (relating to Definitions). This section does not apply to an unauthorized charge unrelated to a change in preferred telecommunications utility. Requirements related to proper authorization for a billing charge by a telecommunication utility are addressed by §26.32 of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming")).

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

(1) **Authorized telecommunications utility** — Any telecommunications utility that submits a change request, after obtaining customer authorization with verification, in accordance with the requirements of this section.

(2) **Customer** — Any person, including the person's spouse, in whose name telephone service is billed, including individuals, governmental units at all levels of government, corporate entities, and any other entity with legal capacity to request a change in local service or telecommunications utilities.

(3) **Executing telecommunications utility** — Any telecommunications utility that effects a request that a customer's preferred telecommunications utility be changed. A telecommunications utility may be treated as an executing telecommunications utility, however, if it is responsible for any unreasonable delays in the execution of telecommunications utility changes or for the execution of unauthorized telecommunications utility changes, including fraudulent authorizations.

(4) **Submitting telecommunications utility** — Any telecommunications utility that requests on behalf of a customer that the customer's preferred telecommunications utility be changed.

(5) **Unauthorized telecommunications utility** — Any telecommunications utility that submits a change request that is not in accordance with the requirements of this section.

(c) **Changes in preferred telecommunications utility.**

(1) **Changes by a telecommunications utility.** A telecommunications utility is prohibited from submitting or executing a change on the behalf of a customer in the customer's selection of a provider of telecommunications service except in accordance with this section. Before a change order is processed by the executing telecommunications utility, the submitting telecommunications utility must obtain authorization from the customer that such change is desired for each affected telephone line and ensure that verification of the authorization is obtained in accordance with 47 C.F.R. Subpart K. In the case of a change by written solicitation, the submitting telecommunications utility must obtain verification as

specified in 47 C.F.R. Subpart K, and subsection (d) of this section. A change order must be verified by one of the following methods:

(A) Written or electronically signed authorization from the customer in a form that meets the requirements of subsection (d) of this section. A customer must be provided the option of using another authorization method as an alternative to an electronically signed authorization.

(B) Electronic authorization placed from the telephone number which is the subject of the change order, except in exchanges where automatic recording of the automatic number identification (ANI) from the local switching system is not technically possible. To verify the electronic authorization, the submitting telecommunications utility must:

(i) ensure that the electronic authorization confirms the information described in subsection (d)(3) of this section; and

(ii) establish one or more toll-free telephone numbers exclusively for the purpose of verifying the change so that a customer calling toll-free number will reach a voice response unit or similar mechanism that records the required information regarding the change and automatically records the ANI from the local switching system.

(C) Oral authorization by the customer for the change that meets the following requirements:

(i) The customer's authorization must be given to an appropriately qualified and independent third party that obtains appropriate verification data including, at a minimum, the customer's month and year of birth, the customer's month and day of birth, mother's maiden name, or the last four digits of the customer's social security number. A corporation or partnership may provide its federal Employer Identification Number, or last six digits thereof, and the name and job title of the authorized representative for the corporation or partnership to satisfy this subparagraph.

(ii) The entirety of the customer's authorization and the customer's verification of authorization must be electronically recorded on audio tape, a wave sound file, or other recording device that is compatible with the commission's equipment.

(iii) The recordings must be dated and include clear and conspicuous confirmation that the customer authorized the change in telephone service provider.

(iv) The third party verification must elicit, at a minimum, the identity of the customer, confirmation that the person on the call is authorized to make the change in service, the name of each telecommunications utility affected by the change but not including the name of the displaced carrier, each telephone number to be switched, and the type of service involved. The third party verifier must not market or advertise the telecommunications utility's services by providing additional information, including information regarding preferred carrier freeze procedures.

(v) The third party verification must be conducted in the same language used in the sales transaction.

(vi) Automated systems must provide customers the option of speaking with a live person at any time during the call.

(vii) A telecommunications utility or its sales representative initiating a three-way call or a call through an automated verification system must drop off the call once a three-way connection with the third party verifier has been established unless:

(I) the telecommunications utility files sworn written certification with the commission that the sales representative is unable to drop off the sales call after initiating a third party verification. Such certification should provide sufficient information as to each reason for the inability of the sales agent to drop off the line after the third party verification is initiated. A carrier is exempt from this requirement for a period of two years from the date the carrier's certification was filed with the commission;

(II) a telecommunications utility that seeks to extend the exemption provided under subclause (I) of this clause must, before the end of the two-year period, and every two years thereafter, recertify to the commission the utility's continued inability to comply with this clause.

(viii) The third party verification must immediately terminate if the sales agent of a telecommunications utility that has filed a sworn written certification in accordance with clause (vii) of this subparagraph responds to a customer inquiry or speaks after third party verification has begun.

(ix) The independent third party must:

(I) not be owned, managed, directed or controlled by the telecommunications utility or the telecommunications utility's marketing agent;

(II) not have financial incentive to confirm change orders; and

(III) operate in a location physically separate from the telecommunications utility and the telecommunications utility's marketing agent.

(2) **Changes by customer request directly to the local exchange company.** If a customer requests a change in the customer's current preferred telecommunications utility by contacting the local exchange company directly, and that local exchange company is not the chosen carrier or affiliate of the chosen carrier, the verification requirements in paragraph (1) of this subsection do not apply. The customer's current local exchange company must maintain a record of the customer's request for 24 months.

(d) **Letters of Agency (LOA).** A written or electronically signed authorization from a customer for a change of telecommunications utility must use a letter of agency (LOA) as specified in this subsection:

(1) The LOA must be a separate or easily separable document or located on a separate screen or webpage containing only the authorization and verification language described in paragraph (3) of this subsection for the sole purpose of authorizing the telecommunications utility to initiate a telecommunications utility change. The LOA must be fully completed, signed and dated by the customer requesting the telecommunications utility change. An LOA submitted with an electronically signed authorization must include the consumer disclosures required by the *Electronic Signatures in Global and National Commerce Act* 47 United States Code §7001(c).

(2) The LOA must not be combined with inducements of any kind on the same document, screen, or webpage, except that the LOA may be combined with a check as specified in subparagraphs (A) and (B) of this paragraph:

(A) An LOA combined with a check may contain only the language set out in paragraph (3) of this subsection, and the necessary information to make the check a negotiable instrument.

(B) A check combined with an LOA must not contain any promotional language or material but must contain on the front and back of the check in easily readable, bold-faced type near the signature line, a notice similar in content to the following: "By signing this check, I am authorizing (name of the telecommunications utility) to be my new telephone service provider for (the type of service that will be provided)."

(3) LOA language.

(A) At a minimum, the LOA must be clearly legible, printed in a text not smaller than 12-point type, and must contain clear and unambiguous language that includes and confirms:

(i) the customer's billing name and address and each telephone number to be covered by the preferred telecommunications utility change order;

(ii) the decision to change preferred carrier from the current telecommunications utility to the new telecommunications utility;

(iii) the name of the new telecommunications utility and that the customer designates the new telecommunications utility to act as the customer's agent for the preferred carrier change;

(iv) that the customer understands that only one preferred telecommunications utility may be designated for each type of service, such as local, intraLATA, and interLATA service, for each telephone number. The LOA must contain separate statements regarding those choices, although a separate LOA for each service is not required;

(v) that the customer understands that any preferred carrier selection the customer chooses may involve a one-time charge to the customer for changing the customer's preferred telecommunications utility and that the customer may consult with the carrier as to whether a fee applies to the change; and

(vi) appropriate verification data, including, at a minimum, the customer's month and year of birth, the customer's month and day

of birth, mother's maiden name, or the last four digits of the customer's social security number. A corporation or partnership may provide a federal Employer Identification Number, or last six digits thereof, and the name and job title of the authorized representative of the corporation or partnership to satisfy the requirements of this subparagraph.

(B) Any telecommunications utility designated in a LOA as the customer's preferred and authorized telecommunications utility must be the carrier directly setting rates for the customer.

(C) The following LOA form meets the requirements of this subsection. Other versions may be used, but must comply with all of the requirements of this subsection.

Customer billing name: _____
Customer billing address: _____
Customer street address: _____
City, state, zip code: _____
Customer's month and year of birth, the customer's month and day of birth, mother's maiden name, or the last four digits of the customer's social security number: _____
_____

If applicable, the name of an individual legally authorized to act for the customer:
_____
Relationship to customer: _____
Telephone number of the individual authorized to act for the customer:
_____
Only one telephone company may be designated as my preferred carrier for each type of service for each telephone number.

_____ By initialing here and signing below, I am authorizing (insert name of new telecommunications utility) to become my new telephone service provider for **local** telephone service. I authorize (insert name of new telecommunications utility) to act as my agent to make this change happen, and direct my (current telecommunications utility) to work with the new provider to make the change.

_____ By initialing here and signing below, I am authorizing (insert name of new telecommunications utility) to become my new telephone service provider in place of my (current telecommunications utility) for **local toll** telephone service. I authorize (insert name of new telecommunications utility) to act as my agent to make this change happen, and direct my (current telecommunications utility) to work with the new provider to make the change.

_____ By initialing here and signing below, I am authorizing (insert name of new telecommunications utility) to become my new telephone service provider

in place of my (current telecommunications utility) for **long distance** telephone service. I authorize (insert name of new telecommunications utility) to act as my agent to make this change happen, and direct my (current telecommunications utility) to work with the new provider to make the change.

I understand that I may be required to pay a one-time charge to switch providers and may consult with the carrier as to whether the charge will apply. If I later wish to return to my current telephone company, I may be required to pay a reconnection charge. I also understand that my new telephone company may have different calling areas, rates, and charges than my current telephone company, and I am willing to be billed accordingly.

Telephone number(s) to be changed: _____

Initial here _____ if you are listing additional telephone numbers to be changed.

I have read and understand this Letter of Agency. I am at least eighteen years of age and legally authorized to change telephone companies for services to each telephone number listed above.

Signed:_____ Date _____

(4) The LOA must not require or suggest that a customer take some action to retain the customer's current telecommunications utility.

(5) If any portion of an LOA is translated into another language, then all portions of the LOA must be translated into that language. Every LOA must be translated into the same language as promotional materials, oral descriptions or instructions provided with the LOA.

(6) The submitting telecommunications utility must submit a change order on behalf of a customer within 60 days after obtaining a written or electronically signed LOA from the customer except LOAs relating to multi-line and/or multi-location business customers that have entered into negotiated agreements with a telecommunications utility to add presubscribed lines to their business locations during the course of a term agreement must be valid for the period specified in the term agreement.

(e) **Notification of alleged unauthorized change.**

(1) When a customer informs an executing telecommunications utility of an alleged unauthorized telecommunications utility change, the executing telecommunications utility must immediately notify both the authorized and alleged unauthorized telecommunications utility of the incident.

(2) Any telecommunications utility, executing, authorized, or alleged unauthorized, that is informed of an alleged unauthorized telecommunications utility change must direct the customer to contact the Public Utility Commission of Texas for resolution of the complaint.

(3) The alleged unauthorized telecommunications utility must remove all unpaid charges pending a determination of whether an unauthorized change occurred.

(4) The alleged unauthorized telecommunications utility may challenge a complainant's allegation of an unauthorized change by notifying the complainant in writing to file a complaint with the Public Utility Commission of Texas within 30 days after the customer's assertion of an unauthorized switch to the alleged unauthorized telecommunications utility. If the complainant does not file a complaint within 30 days, the unpaid charges may be reinstated.

(5) The alleged unauthorized telecommunications utility must take all actions within its control to facilitate the customer's prompt return to the original telecommunications utility within three working days of the customer's request.

(6) The alleged unauthorized telecommunications utility must also be liable to the customer for any charges assessed to change the customer from the authorized telecommunications utility to the alleged unauthorized telecommunications utility in addition to charges assessed for returning the customer to the authorized telecommunications utility.

(f) **Unauthorized changes.**

(1) **Responsibilities of the telecommunications utility that initiated the change.** If a customer's telecommunications utility is changed without verification consistent with this section, the telecommunications utility that initiated the unauthorized change must:

(A) take all actions within its control to facilitate the customer's prompt return to the original telecommunications utility within three working days of the customer's request;

(B) pay all charges associated with returning the customer to the original telecommunications utility within five working days of the customer's request;

(C) provide all billing records to the original telecommunications utility related to the unauthorized change of services within ten working days of the customer's request;

(D) pay, within 30 working days of the customer's request, the original telecommunications utility any amount paid to it by the customer that would have been paid to the original telecommunications utility if the unauthorized change had not occurred;

(E) return to the customer within 30 working days of the customer's request:

(i) any amount paid by the customer for charges incurred during the first 30 calendar days after the date of an unauthorized change; and

(ii) any amount paid by the customer after the first 30 calendar days in excess of the charges that would have been charged if the unauthorized change had not occurred;

(F) remove all unpaid charges; and

(G) pay the original telecommunications utility for any billing and collection expenses incurred in collecting charges from the unauthorized telecommunications utility.

(2) **Responsibilities of the original telecommunications utility**. The original telecommunications utility must:

(A) inform the telecommunications utility that initiated the unauthorized change of the amount that would have been charged for identical services if the unauthorized change had not occurred, within ten working days of the receipt of the billing records required under paragraph (1)(C) of this subsection;

(B) where possible, provide to the customer all benefits associated with the service, such as frequent flyer miles, that would have been awarded had the unauthorized change not occurred, upon receiving payment for service provided during the unauthorized change;

(C) maintain a record of customers that experienced an unauthorized change in telecommunications utilities that contains:

(i) the name of the telecommunications utility that initiated the unauthorized change;

(ii) each telephone number affected by the unauthorized change;

(iii) the date the customer asked the telecommunications utility that made the unauthorized change to return the customer to the original telecommunications utility; and

(iv) the date the customer was returned to the original telecommunications utility; and

(D) not bill the customer for any charges incurred during the first 30 calendar days after the unauthorized change, but may bill the customer for unpaid charges incurred after the first 30 calendar days based on what it would have charged if the unauthorized change had not occurred.

(g) **Notice of customer rights.**

(1) Each telecommunications utility must make available to its customers the notice set out in paragraph (3) of this subsection.

(2) Each notice provided under paragraph (5)(A) of this subsection must contain the name, address and telephone numbers where a customer can contact the telecommunications utility.

(3) **Customer notice.** The notice must state:

Selecting a Telephone Company -- Your Rights as a Customer

Telephone companies are prohibited by law from switching you from one telephone service provider to another without your permission, a practice commonly known as "slamming."

If you are slammed, Texas law requires the telephone company that slammed you to do the following:

1. Pay, within five working days of your request, all charges associated with returning you to your original telephone company.
2. Provide all billing records to your original telephone company within ten working days of your request.

3. Pay, within 30 working days, your original telephone company the amount you would have paid if you had not been slammed.
4. Refund to you within 30 working days any amount you paid for charges during the first 30 days after the slam and any amount more than what you would have paid your original telephone company for charges after the first 30 days following the slam.

Your original telephone company is required to provide you with all the benefits, such as frequent flyer miles, you would have normally received for your telephone use during the period in which you were slammed.

If you have been slammed, you can change your service immediately back to your original provider by calling your authorized telecommunications provider (your original provider) and advising the company that you have been switched from its service without appropriate authorization. You should also report the slam by writing or calling the PUCT Consumer Protection Division , P.O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or in Texas (toll-free) 1 (888) 782-8477, e-mail address: consumer@puc.texas.gov. Hearing and speech-impaired individuals may contact the commission through Relay Texas.

You can prevent slamming by requesting a preferred telephone company freeze from your current service provider. With a freeze in place, you must give formal consent to "lift" the freeze before your phone service can be changed. A freeze may apply to local toll service, long distance service, or both. The Public Utility Commission of Texas can give you more information about freezes and your rights as a customer.

(4) The customer notice requirements in paragraph (3) of this subsection may be combined with the notice requirements of §26.32(g)(1) and (2) of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming")) if all of the information required by each is in the combined notice.

(5) **Language, distribution and timing of notice**.

(A) Telecommunications utilities must send the notice to new customers at the time service is initiated, and upon customer request.

(B) Each telecommunications utility must print the notice in the white pages of its telephone directories, beginning with any directories published 30 calendar days after the effective date of this section and thereafter. The notice that appears in the directory is not required to list the information contained in paragraph (2) of this subsection.

(C) The notice must be in plain English and Spanish as necessary to adequately inform the customer. The commission may exempt a telecommunications utility from the Spanish requirement if the telecommunications utility shows that 10% or fewer of its customers are exclusively Spanish-speaking, and that the telecommunications utility will notify all customers through a statement in plain English and Spanish that the information is available in

Spanish by mail from the telecommunications utility or at the utility's offices.

(h) **Compliance and enforcement.**

(1) **Records of customer verifications and unauthorized changes.**

(A) The submitting telecommunications utility must maintain records of all change orders, including verifications of customer authorizations, for a period of 24 months and must provide such records to the customer, if the customer challenges the change.

(B) A telecommunications utility must provide a copy of records maintained under the requirements of subsections (c), (d), and (f)(2)(C) of this section to the commission staff 21 calendar days from the date the records were requested by commission staff.

(C) The proof of authorization and verification of authorization as required from the alleged unauthorized telecommunications utility in accordance with subparagraph (B) of this paragraph and paragraph (2)(A) of subsection (l) must establish a valid authorized telecommunications utility change as defined by subsections (c) and (d) of this section. Failure by the alleged unauthorized telecommunications utility to timely submit a response that addresses the complainant's assertions, relating to an unauthorized change, within the time specified in subparagraph (B) of this paragraph or paragraph (2) of subsection (l) establishes a violation of this section.

(2) **Administrative penalties.** If the commission finds that a telecommunications utility is in violation of this section, the commission will order the utility to take corrective action as necessary, and the utility may be subject to administrative penalties in accordance with Public Utility Regulatory Act (PURA) §15.023 and §15.024.

(3) **Evidence.** Evidence supplied by the customer that meets the standards set out in Texas Government Code §2001.081, including one or more affidavits from a customer challenging the change, is admissible in a proceeding to enforce the provisions of this section.

(4) **Certificate revocation.** The commission may suspend, restrict, deny, or revoke the registration or certificate, including an amended certificate, of a telecommunications utility, denying the telecommunications utility the right to provide service in this state, in accordance with the provisions of either PURA §17.052 or PURA §55.306.

(5) **Coordination with the office of the attorney general.** The commission will coordinate its enforcement efforts regarding the prosecution of fraudulent, unfair, misleading, deceptive, and anticompetitive business practices with the Office of the Attorney General to ensure consistent treatment of specific alleged violations.

(i) **Notice of identity of a customer's telecommunications utility.** Any bill for telecommunications services must contain the following information in clear, bold type in each bill sent to a customer. Where charges for multiple lines are included in a single bill, this information must appear on the first page of the bill if possible, or be displayed prominently elsewhere in the bill:

(1) The name and telephone number of the telecommunications utility providing local exchange service if the bill is for local exchange service.

(2) The name and telephone number of the primary interexchange carrier if the bill is for interexchange service.

(3) The name and telephone number of the local exchange and interexchange providers if the local exchange provider is billing for the interexchange carrier. The commission may, for good cause, waive this requirement in exchanges served by incumbent local exchange companies serving 31,000 access lines or less.

(4) A statement that customers who believe they have been slammed may contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or in Texas (toll-free) 1 (888) 782-8477, e-mail address: consumer@puc.texas.gov. Hearing and speech-impaired individuals may contact the commission through Relay Texas at 1-800-735-2989. This statement may be combined with the statement requirements of §26.32(g)(4) of this title if all of the information required by each is in the combined statement.

(j) **Preferred telecommunications utility freezes.**

(1) **Purpose**. A preferred telecommunications utility freeze ("freeze") prevents a change in a customer's preferred telecommunications utility selection unless the customer consents to the local exchange company that implemented the freeze.

(2) **Nondiscrimination.** All local exchange companies that offer freezes must offer freezes on a nondiscriminatory basis to all customers regardless of the customer's telecommunications utility selection except for local telephone service.

(3) **Type of service**. Customer information on freezes must clearly distinguish between intraLATA and interLATA telecommunications services. The local exchange company offering a freeze must obtain separate authorization for each service for which a freeze is requested.

(4) **Freeze information**. All information provided by a telecommunications utility about freezes have the sole purpose of educating customers and providing information in a neutral way to allow the customer to make an informed decision, and must not market or induce the customer to request a freeze. The freeze information provided to customers must include:

(A) a clear, neutral explanation of what a freeze is and what services are subject to a freeze;

(B) instructions on lifting a freeze that make it clear that these steps are in addition to required verification for a change in preferred telecommunications utility;

(C) an explanation that the customer will be unable to make a change in telecommunications utility selection unless the customer lifts the freeze, including information describing the specific procedures by which the freeze may be lifted; and

(D) a statement that there is no charge to the customer to impose or lift a freeze.

(5) **Freeze verification**. A local exchange company must not implement a freeze unless the customer's request is verified using one of the following procedures:

(A) A written and signed or electronically signed authorization that meets the requirements of paragraph (6) of this subsection.

(B) An electronic authorization placed from the telephone number on which a freeze is to be imposed. The electronic authorization must confirm appropriate verification data including the customer's month and year of birth, the customer's month and day of birth, mother's maiden name, or the last four digits of the customer's social security number and the information required in paragraph (6)(G) of this subsection. A corporation or partnership may provide a federal Employer Identification Number, or last six digits thereof, and the name and job title of the authorized representative of the corporation or partnership to satisfy the requirements of this subparagraph. The local exchange company must establish one or more toll-free telephone numbers exclusively for this purpose. Calls to the number will connect the customer to a voice response unit or similar mechanism that records the information including the originating ANI.

(C) An appropriately qualified independent third party obtains the customer's oral authorization to submit the freeze that includes and confirms appropriate verification data as required by subparagraph (B) of this paragraph. This must include clear and conspicuous confirmation that the customer authorized a freeze. The independent third party must:

(i) not be owned, managed, or directly controlled by the local exchange company or the local exchange company's marketing agent;

(ii) not have financial incentive to confirm freeze requests; and

(iii) operate in a location physically separate from the local exchange company and its marketing agent.

(D) Any other method approved by Federal Communications Commission rule or order granting a waiver.

(6) **Written authorization**. A written freeze authorization must:

(A) be a separate or easily separable document with the sole purpose of imposing a freeze;

(B) be signed and dated by the customer;

(C) not be combined with inducements of any kind;

(D) be completely translated into another language if any portion is translated;

(E) be translated into the same language as any educational materials, oral descriptions, or instructions provided with the written freeze authorization;

(F) be printed with readable type of sufficient size to be clearly legible; and

(G) contain clear and unambiguous language that confirms:

(i) the customer's name, address, and each telephone number to be covered by the freeze;

(ii) the decision to impose a freeze on each telephone number and the particular service with a separate statement for each service to be frozen;

(iii) that the customer understands that a change in telecommunications utility cannot be made unless the customer lifts the freeze; and

(iv) that the customer understands that there is no charge for imposing or lifting a freeze.

(7) **Lifting freezes**. A local exchange company that executes a freeze request must allow customers to lift a freeze by:

(A) written and signed or electronically signed authorization stating the customer's intent to lift a freeze;

(B) oral authorization stating an intent to lift a freeze confirmed by the local exchange company with appropriate confirmation verification data as indicated in paragraph (5)(B) of this subsection;

(C) a three-way conference call with the local exchange company, the telecommunications utility that will provide the service, and the customer with appropriate confirmation verification data from the customer as indicated in paragraph (5)(B) of this subsection; or

(D) any other method approved by Federal Communications Commission rule or order granting a waiver.

(8) **No customer charge.** The customer must not be charged for imposing or lifting a freeze.

(9) **Local service freeze prohibition.** A local exchange company must not impose a freeze on local telephone service.

(10) **Marketing prohibition.** A local exchange company must not initiate any marketing of its services during the process of implementing or lifting a freeze.

(11) **Freeze records retention**. A local exchange company must maintain records of all freezes and verifications for a period of 24 months and must provide these records to customers and to the commission staff upon request.

(12) **Suggested freeze information language.** A telecommunications utility that informs a customer about freezes may use the following language. Other versions may be used, but must comply with all of the requirements of paragraph (4) of this subsection.

(13) **Suggested freeze authorization form.** The following form is recommended for written authorization from a customer requesting a freeze. Other versions may be used, but must comply with all of the requirements of paragraph (6) of this subsection.

Freeze Authorization Form

Customer billing name: _____
Customer service address: _____
City, state, zip code: _____
Customer mailing address: _____
City, state, zip code: _____
Telephone number (1): _____
Telephone number (2): _____
Telephone number (3): _____
Customer's month and year of birth, the customer's month and day of birth, mother's maiden name, or last four digits of the customer's social security number:
_____

The purpose of a freeze is to prevent a change in your telephone company without your consent. A freeze is a protection against "slamming" (switching your telephone company without your permission). You can impose a freeze on either your local toll or long distance service provider, or both. If you want a freeze, you must contact (name of local telephone company) at (phone number) to lift the freeze before you can change your service provider. You may add or lift a freeze at any time at no charge.

Please complete the following for each service for which you are requesting a freeze:

I authorize a freeze for the telephone number(s) listed above for **local toll** service.
Current preferred local toll company: _____
Customer's signature: _____
Date: _____
Customer's printed name: _____

I authorize a freeze for the telephone number(s) listed above for **long distance** service.
Current preferred long distance company: _____
Customer's signature: _____
Date: _____
Customer's printed name: _____

Mail this form to:
(Name of local telephone company)
(Address)
Or FAX to: (FAX number)

(14) **Suggested freeze lift form.** The following form is recommended for written authorization to lift a freeze. Other versions may be used, but must comply with all of the requirements of paragraph (7) of this subsection.

Freeze Lift Form

Customer billing name: _____
Customer service address: _____
City, state, zip code: _____
Customer mailing address: _____
City, state, zip code: _____
Telephone number (1): _____
Telephone number (2): _____
Telephone number (3): _____
Customer's month and year of birth, the customer's month and day of birth, mother's maiden name, or last four digits of the customer's social security number:
_____

Please complete the following for each service that you wish to lift a freeze:

I wish to remove a freeze for the telephone number(s) listed above for **local toll** service.
Current preferred local toll company: _____
Customer's signature: _____
Date: _____
Customer's printed name: _____

I wish to remove a freeze for the telephone number(s) listed above for **long distance** service.

Current preferred long distance company: _____
Customer's signature: _____
Date: _____
Customer's printed name: _____

Mail this form to:
(Name of local telephone company)
(Address)
Or FAX to: (FAX number)

(k) **Transferring customers from one telecommunications utility to another.**

(1) A telecommunications utility may acquire, through a sale or transfer, either part or all of another telecommunications utility's customer base without obtaining each customer's authorization and verification in accordance with subsection (c)(1) of this section, provided that the acquiring utility complies with this section. Any telecommunications utility that will acquire customers from another telecommunications utility that will no longer provide service due to acquisition, merger, bankruptcy or any other reason, must provide notice to each affected customer. The notice must be in a billing insert or separate mailing at least 30 calendar days prior to the transfer of any customer. If legal or regulatory constraints prevent sending the notice at least 30 calendar days prior to the transfer, the notice must be sent promptly after all legal and regulatory conditions are met. The notice must:

(A) identify the current and acquiring telecommunications utilities;

(B) explain why the customer will not be able to remain with the current telecommunications utility;

(C) explain that the customer has a choice of selecting a service provider and may select the acquiring telecommunications utility or any other telecommunications utility and that the customer may incur a charge if the customer selects another telecommunications utility;

(D) explain that if the customer wants another telecommunications utility, the customer should contact that telecommunications utility or the local telephone company;

(E) explain the time frame for the customer to make a selection and what will happen if the customer makes no selection;

(F) identify the effective date that customers will be transferred to the acquiring telecommunications utility;

(G) provide the rates and conditions of service of the acquiring telecommunications utility and how the customer will be notified of any changes;

(H) explain that the customer will not incur any charges associated with the transfer;

(I) explain whether the acquiring carrier will be responsible for handling complaints against the transferring carrier; and

(J) provide a toll-free telephone number for a customer to call for additional information.

(2) The acquiring telecommunications utility must provide the commission with a copy of the notice when it is sent to customers.

(l) **Complaints to the commission.** A customer may file a complaint with the commission's CPD against a telecommunications utility for any reasons related to the provisions of this section.

(1) **Customer complaint information.** CPD may request, at a minimum, the following information:

(A) the customer's name, address, and telephone number;

(B) a brief description of the facts of the complaint;

(C) a copy of the customer's and spouse's legal signature; and

(D) a copy of the most recent phone bill and any prior phone bill that shows the switch in carrier.

(2) **Telecommunications utility's response to complaint.** After review of a customer's complaint, CPD must forward the complaint to the telecommunications utility. The telecommunications utility must respond to CPD within 21 calendar days after CPD forwards the complaint. The telecommunications utility's response must include the following:

(A) all documentation related to the authorization and verification used to switch the customer's service; and

(B) all corrective actions taken as required by subsection (f) of this section, if the switch in service was not verified in accordance with subsections (c) and (d) of this section.

(3) **CPD investigation.** CPD must review all of the information related to the complaint and make a determination on whether or not the telecommunications utility complied with the requirements of this section. CPD must inform the complainant and the alleged unauthorized telecommunications utility of the results of the investigation and identify any additional corrective actions that may be required. CPD must also inform, if known, the authorized telecommunications utility if there was an unauthorized change in service.

(m) **Additional requirements for changes involving certain telecommunications utilities.**

(1) **Definitions.** The following words and terms, when used in this subsection, have the following meanings unless the context clearly indicates otherwise.

(A) Local service provider (LSP) — the certified telecommunications utility chosen by a customer to provide local exchange service to that customer.

(B) Old local service provider (old LSP) — The local service provider immediately preceding the change to a new local service provider.

(C) New local service provider (new LSP) — The local service provider from which the customer requests new service.

(D) Primary interexchange carrier (PIC) — the provider chosen by a customer to carry that customer's toll calls. For the purposes of this subsection, any reference to primary interexchange carrier refers to both interLATA and intraLATA toll carriers.

(E) Old primary interexchange carrier (old PIC) — The primary interexchange carrier immediately preceding the change to a new primary interexchange carrier.

(F) New primary interexchange carrier (new PIC) — The primary interexchange carrier from which the customer requests new service or continuing service after changing local service providers.

(G) Change execution — means the date the LSP initially has knowledge of the PIC or LSP change in the switch.

(2) **Contents and delivery of notice required by paragraphs (3) and (4) of this subsection.**

(A) Notice must contain at least:

(i) the effective date of the change in the switch;

(ii) the customer's billing name, address, and number; and

(iii) any other information necessary to implement the change.

(B) If an LSP does not otherwise have the appropriate contact information for notifying a PIC, then the LSP's notification to the PIC must be deemed complete upon delivery of the notice to the PIC's address, facsimile number or e-mail address listed in the appropriate utility directory maintained by the commission.

(3) **Notification requirements for change in PIC only.** The LSP must notify the old PIC and the new PIC of the PIC change within five working days of the change execution.

(A) The new PIC must initiate billing the customer for presubscribed services within five working days after receipt of such notice.

(B) The old PIC must discontinue billing the customer for presubscribed services within five working days after receipt of such notice.

(4) **Notification requirements for change in LSP.**

(A) Requirement of the new LSP to notify the old LSP. Within five working days of the change execution, the new LSP must notify the old LSP of the change in the customer's LSP.

(B) Requirement of the new LSP to notify the new PIC. Within five working days of the change execution, the new LSP must notify the new PIC of the customer's selection of such PIC as the customer's PIC.

(C) Requirement of the old LSP to notify the old PIC. Within five working days of the old LSP's receipt of notice in accordance with to subparagraph (A) of this paragraph, the old LSP must notify the old PIC that the old LSP is no longer the customer's LSP.

(5) **Requirements of the new PIC to initiate billing customer.** If the new PIC receives notice in accordance with paragraph (4)(B) of this subsection, within five working days after receipt of such notice, the new PIC must initiate billing the customer for presubscribed services.

(6) **Requirements of the old PIC to discontinue billing customer.** If the old PIC receives notice in accordance with paragraph (4)(C) of this subsection that the old LSP is no longer the customer's LSP, the old PIC must discontinue billing the customer for presubscribed services within seven working days after receipt of such notice, unless the new LSP notifies the old PIC that it is the new PIC in accordance with paragraph (4)(B) of this subsection.

§26.171. Small Incumbent Local Exchange Company Regulatory Flexibility.

(a) **Purpose and application**.

(1) **Purpose.** The purpose of this section is to establish procedures and pricing guidelines that small incumbent local exchange companies (ILECs), because of their special characteristics, may use to expedite commission approval of services and rates in accordance with the Public Utility Regulatory Act (PURA), Chapter 53, Subchapter G. Through this section, the commission encourages the provision of adequate and efficient telecommunications service by facilitating the ability of small ILECs' to offer technologically advanced services that are generally available in metropolitan areas from large ILECs.

(2) **Application**. This section applies to any small ILEC as that term is defined in §26.5 of this title (relating to Definitions), except that this section does not apply to a cooperative corporation partially deregulated under PURA, Chapter 53, Subchapter H. Nothing in this section precludes a small ILEC from offering a packaged service, new service, or promotional service_or proposing a change in rates under other applicable sections of the PURA. Nothing in this section prohibits the commission from conducting a review in accordance with PURA, Chapter 53, Subchapter D. Notwithstanding limitations contained within §26.121 of this title (relating to Privacy Issues), §26.121 of this title applies to notices to the commission (commission notices) filed under this section.

(b) **Definition.** The term "affected customer" when used in this section means a customer that is in the class of customers and in the exchange or exchanges affected by the notice filed in accordance with the provisions of this section.

(c) **Filing.** By following procedures outlined in this section, a small ILEC may offer extended local calling service, a packaged service, a promotional service, or a new service on an optional basis or make a minor change in its rates or tariffs.

(1) **Notice**. At least ten calendar days before the effective date of the proposed change, the small ILEC must file notice with the commission and the Office of Public Utility Counsel. Such notice must include:

(A) a copy of the customer notice required by subsection (d) of this section;

(B) a sufficient description of how notice was or will be provided to the customers to allow the presiding officer to rule on the sufficiency of the notice;

(C) any request for a good cause waiver to the requirements of this section, and sufficient justification for the good cause exception to allow the presiding officer to rule on the request;

(D) a copy of the resolution adopted by the small ILEC's board of directors approving the proposed change;

(E) the proposed effective date of the change;

(F) a description of the affected services and the category of customers affected by the proposed change;

(G) a copy of the proposed tariff;

(H) the number of access lines the small ILEC and each of its affiliates has in service in the state;

(I) the amount by which the small ILEC's total regulated intrastate gross annual revenues will increase or decrease as a result of the proposed change, and, if the proposal is for a rate change, sufficient information to demonstrate that the proposed change is a minor change;

(J) a statement affirming that the rates are just and reasonable, are not unreasonably preferential, prejudicial, or discriminatory, and are sufficient, equitable, and consistent in application to each class of customers, in accordance with PURA §53.003;

(K) information required by §26.121 of this title (relating to Privacy Issues); and

(L) any other information the small ILEC wants considered in connection with the notice.

(2) **Response to the commission notice**. No later than ten calendar days after the small ILEC files the commission notice, the presiding officer assigned to the project will notify the small ILEC of any deficiencies in the commission notice, whether the notice to the customers is approved, and whether a waiver request, if any, is granted.

(d) **Notice.** A small ILEC satisfies the notice requirements in paragraphs (1)-(4) of this subsection by completing notice to the affected customers no later than 10 days before the proposed effective date of the tariff sheets. If notice is not completed as required, the proposed effective date will be postponed for as many days as completion of notice is delayed.

(1) **Extended local calling service, packaged service, promotional service or new service**. For extended local calling service, a packaged service, promotional service or a new service, notice must be provided to each affected customer.

(2) **Good cause exceptions**. The presiding officer may require for good cause that notice be provided in addition to notice proposed by the small ILEC for a proposed new service or may waive for good cause the notice requirement prescribed by this section.

(3) **Contents of notice**. Each notice must include:

(A) a description of each service affected by the proposed change;

(B) a list of rates affected by the commission notice and how the rates affect each category of affected customers;

(C) the proposed effective date of the change;

(D) an explanation of the affected customer's right to petition the commission for review under subsection (g)(2) of this section, including the number of affected persons required to petition before commission review will occur and the date by which the petition must be received by the commission, which date must be 30 calendar days following the completion of notice;

(E) an explanation of the affected customer's right to obtain from the small ILEC a copy of the proposed tariff and instructions on how to do so; and

(F) the amount by which the small ILEC's total regulated intrastate gross annual revenues will increase as a result of the proposed change.

(4) **Proof of customer notice**. No later than seven calendar days following completion of notice, the small ILEC or a representative of the small ILEC must file one or more affidavits establishing proof of notice to customers as required by this subsection.

(e) **New service availability.** If the commission notice concerns a new service, as defined in §26.5 of this title, that will not be offered system-wide, the small ILEC must explain separately for each telephone exchange why the new service cannot be offered system-wide.

(f) **Rates and revenues.** The following requirements apply to a commission notice filed under this section:

(1) **Minor change**. A proposed rate change must be a minor change as defined in §26.5 of this title.

(2) **Limitation on rate increases.** Except for good cause shown, a rate will not be increased more than once in any 12-month period.

(3) **Rate-setting principles.** A rate established under this section must be in accordance with the rate-setting principles of PURA, Chapter 53, except that a small ILEC may provide to its board members, officers, employees, or agents free or reduced rates for services.

(g) **Review.**

(1) **Effective date**. A proposed tariff filed under this section is effective on the date proposed by the small ILEC, unless the effective date is suspended.

(2) **Suspension of tariff**. The proposed tariff may be suspended up to 150 calendar days to provide the commission an opportunity to review the commission notice. Additionally, the presiding officer will suspend the tariff if within 30 calendar days following the completion of the customer notice:

(A) the commission receives a complaint relating to the proposed change signed by the lesser of 5.0% or 1,500 of the affected local service customers to which the proposed change applies. Five percent will be calculated based upon the total number of affected customers of record as of the calendar month preceding receipt of the complaint; or

(B) the commission receives a complaint relating to the proposed change from either an affected intrastate access customer or a group of affected intrastate access customers that, in the preceding 12 months, the small ILEC billed more than 10% of its total intrastate gross access revenues; or

(C) the proposed change is not a minor change; or

(D) the proposed change is not consistent with the commission's written substantive policies; or

(E) the small ILEC has not complied with the procedural requirements of this section.

(h) **Docketing**. Following suspension of the effective date of the proposed tariff, the presiding officer will provide a small ILEC a reasonable opportunity to modify its commission notice to address conditions that exist, if any, under subsection (g)(2) of this

section. If conditions under subsection (g)(2) of this section are not resolved during the suspension period, the presiding officer may docket the project. If the project is docketed, the effective date of the proposed tariff will be automatically suspended and the commission will review the commission notice in accordance with the commission's procedural rules applicable to docketed cases.

§26.175. Reclassification of Telecommunications Services for Electing Incumbent Local Exchange Companies (ILECs).

(a) **Purpose.** The provisions of this section:

(1) establish the minimum criteria and standards for reclassifying a basic network service as a discretionary service or competitive service; or a discretionary service as a competitive service, in accordance with the Public Utility Regulatory Act (PURA) §58.024; and

(2) to establish the procedures to be followed in petitioning for reclassification.

(b) **Application.** This section applies to electing ILECs.

(c) **General standards for reclassification of a service.** The following conditions must be satisfied to reclassify a service.

(1) **Prerequisite for reclassification of a service.** The commission may reclassify a service only if each competitive safeguard prescribed by PURA Chapter 60, Subchapters B through H, is fully implemented.

(2) **Designation of reclassification area.** An electing ILEC must designate the exchange areas for which it is seeking to reclassify each service. A reclassification area must contain the entire territory of each exchange area designated.

(3) **Identification of services to be reclassified.** An electing ILEC must identify each service which it is seeking to reclassify and must specify for each service whether the service is for residential lines, business lines, or both.

(4) **Public interest standard.** The reclassification of the service is just and reasonable, is not unreasonably preferential, prejudicial, or discriminatory, or predatory or anti-competitive, and is in the public interest.

(5) **Rate changes.** Rate changes must be contemplated by the commission, in a separate proceeding, after reclassification has occurred.

(d) **Standards for reclassification of a basic network service as a discretionary service.** In addition to meeting the requirements of subsection (c) of this section, the following conditions must be satisfied to reclassify a basic network service as a discretionary service:

(1) The service is not necessary to complete a telephone call; and

(2) Public policy determines that the service does not need to remain in a basic network service classification.

(e) **Standards for reclassification of a basic network service or discretionary service as a competitive service.** In addition to meeting the requirements of subsection (c), the following conditions must be satisfied to reclassify a basic network service as a competitive service, or to reclassify a discretionary service as a competitive service:

(1) There is an alternative facilities-based provider offering the same, equivalent, or substitutable service at comparable rates, terms, and conditions in the reclassification area;

(2) At least 60% of access lines of the type, either residential, business, or both, for which the service is provided that are located in the reclassification area have access to alternative, facilities-based providers;
(3) Substantial barriers to entry do not exist for the relevant market;
(4) The existing competitors have or can easily obtain additional capacity, or new competitors may easily enter the market in response to an increase in price of the electing ILEC's rates; and
(5) The electing ILEC does not have market power sufficient to control the price of the service in the reclassification area in a manner that is adverse to the public interest.

(f) **Requirements for notice and contents of the application in compliance with this section.**

(1) **Notice of Application.** The electing ILEC must provide direct notice to all certificate of convenience and necessity, service provider certificate of operating authority, and certificate of operating authority holders offering service in the reclassification area and issue notice to each customer of the ILEC in the reclassification area. The notice must include a description of the requested reclassification, the service, the proposed rates, the reclassification area, other terms of the service, the types of customers likely to be affected if the application is approved, the proposed effective date for the application, and the following language: "Persons who wish to comment on this application should notify the commission by (specified date, ten days before the proposed effective date), and (any other item required by the presiding officer). Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the PUCT Consumer Protection Division at (512) 936-7120 or toll free at (888) 782-8477. Hearing- and speech-impaired individuals may contact the commission through Relay Texas at 1-800-735-2989."

(2) **Contents of application for each electing ILEC seeking a service reclassification.** In addition to the commission's filing requirements, one copy of the application must be delivered to commission staff and one copy must be delivered to the Office of Public Utility Counsel (OPUC). The application must contain the following:

(A) A showing by the electing ILEC that the competitive safeguards in PURA, Chapter 60, Subchapters B through H have been met;
(B) For each exchange in the reclassification area, a description of the reclassification sought, each service, the rates, terms, and conditions under which each service is currently provided, how the proposed reclassification of each service is just and reasonable and is not unreasonably preferential, prejudicial, discriminatory, predatory or anti-competitive;
(C) A description of the reclassification area, specifying the exchange area or areas, for which the reclassification is requested;
(D) The proposed effective date of the reclassification;
(E) A statement detailing the method and content of the notice, if any, the utility has provided or intends to provide to the public regarding the application and a brief statement explaining why the electing ILEC's notice proposal is

reasonable and that the electing ILEC's notice proposal complies with applicable law;

(F) A copy of the text of the notice, if any;

(G) A showing that the relevant standards required under subsection (d) or (e) of this section, whichever is applicable, have been satisfied for each exchange in the reclassification area;

(i) An estimate of the number and size of alternative facilities-based providers offering the service to be reclassified for each exchange in the reclassification area;

(ii) The total number and percentage of the electing ILEC's subscribers of the service in the reclassification area, for each exchange, measured by number of customers and access lines;

(iii) An estimate of the electing ILEC's market share for the service, for each exchange, measured by number of customers and access lines; and

(H) An explanation of how the reclassification of the service advances the public interest for each exchange in the reclassification area.

(g) **Commission processing of application.**

(1) **Administrative review.** An application considered under this section is eligible for administrative review unless the electing ILEC requests the application be docketed or the presiding officer, for good cause, determines at any point during the review that the application should be docketed.

(A) The operation of the proposed rate schedule may be suspended for 35 days after the effective date of the reclassification. The effective date must be no earlier than 30 days after the filing date of the application or 30 days after public notice is completed, whichever is later.

(B) The application must be reviewed for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant must be notified within ten working days of the filing date of the specific deficiency in its application, and the earliest possible effective date of the reclassification will be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any deadlines will be determined 30 days from the day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date.

(C) While the application is under administrative review, the commission staff and the staff of OPUC may submit requests for information to the electing ILEC. A copy of all answers to such requests for information must be filed with central records and must be provided to OPUC within ten days after receipt of the request by the electing ILEC.

(D) No later than 20 days after the filing date of the sufficient application, interested persons may provide to the commission staff written comments or recommendations concerning the application. Commission staff will and OPUC may file with the presiding officer written comments or recommendations concerning the application.

(E) No later than 35 days after the effective date of the reclassification, the presiding officer will issue an order approving, denying, or docketing the electing ILEC's application.

(2) **Approval or denial of application.** The application will be approved by the presiding officer if the proposed reclassification complies with each requirement of this section. If, based on the administrative review, the presiding officer determines that one or more of the requirements not waived have not been met, the presiding officer must docket the application.

(3) **Standards for docketing.** The application may be docketed in accordance with§22.33(b) of this title (relating to Tariff Filings).

(4) **Review of the application after docketing.** If the application is docketed, the deadline is automatically suspended to 120 days after the applicant has filed all direct testimony and exhibits, or 155 days after the effective date of the reclassification, whichever is later. Affected persons may move to intervene in the docket, and the presiding officer may schedule a hearing on the merits. The application must be processed in accordance with the commission's rules applicable to docketed cases.

§26.207. Form and Filing of Tariffs

(a) **Application**. Unless the context clearly indicates otherwise, in this section the term "utility" or "public utility" refers to a dominant carrier.

(b) **Purpose.** This section establishes standards for the form, filing and review of a dominant certificated telecommunications utility's (DCTU's) tariff.

(c) **Effective tariff**. A utility is prohibited from directly or indirectly demanding, charging, or collecting any rate or charge, or imposing any classifications, practices, rules, or regulations different from those prescribed in its currently effective tariff filed with and approved by the commission.

(d) **Tariff required.**

(1) A public utility, or an affiliate of the public utility or a trade association on behalf of the public utility, must file with the commission a tariff showing each rate that is subject to the commission's jurisdiction and is in effect for a utility service, product, or commodity offered by the utility. A current or proposed tariff must:

(A) include a cover letter that lists each rule that relates to or affects a rate of the utility, or a utility service, product, or commodity furnished by the utility;

(B) be filed prior to or concurrently with an application for certification, including a certificate amendment, under §26.111 (relating to Certificate of Operating Authority (COA) and Service Provider Certificate of Operating Authority (SPCOA) Criteria); and

(C) as applicable, comply with the requirements of this section and §26.208 of this title (relating to General Tariff Procedures), §26.209 of this title (relating to New and Experimental Services), or §26.211 of this title (relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges).

(2) A public utility must also file each subsequent tariff revision with the commission. Each revision must be accompanied by a cover page which contains a list of pages being revised, a statement describing each change, the effect of the change if it revises an existing rate, and a statement describing the impact on rates of the change for each customer class, if any. If a proposed tariff revision constitutes an increase in existing rates of a particular customer class, then the commission may require that notice be given.

(3) A telecommunications utility, upon the issuance of a commission order determining that the telecommunications utility is a dominant carrier, must file a tariff complying with the requirements of this subsection. Such a tariff must be filed within the time specified in the commission order, or within 60 days in the absence of such a specification.

(e) **Filing of public utility tariff by affiliate or trade association.** An affiliate of a public utility or trade association may file a tariff or tariff revision under this section or other applicable law, on behalf of a public utility.

(1) For each filing, the public utility must authorize the affiliate of the nondominant carrier or trade association, via written affidavit filed with the commission, to file such information on its behalf.
(2) The authorization specified by paragraph (1) of this subsection may be included in the filing by the affiliate of the public utility or trade association.
(3) The filing by affiliate of the public utility or trade association must comply with the requirements of this section and other applicable law.

(f) **Tariff filing requirements.**
(1) The front page of the tariff must include the name of the utility and location of its principal office and the type of service rendered.
(2) Each rate schedule must clearly state the territory, city, county, or exchange where the rate schedule applies.
(3) Tariff sheets must be numbered consecutively per schedule. Each sheet must show an effective date, a revision number, section number, sheet number, name of the utility, the name of the tariff, and title of the section in a consistent manner. Sheets issued under new numbers must be designated as original sheets. Sheets being revised must show the number of the revision, and the sheet numbers must be the same.

(g) **Composition of tariffs**. A tariff must contain sections setting forth:
(1) a table of contents;
(2) a preliminary statement containing a brief description of the utility's operations;
(3) a list of the cities, exchanges, and counties in which service is provided;
(4) the rate schedules; and
(5) the service rules and regulations, including forms of the service agreements.

(h) **Tariff filings in response to commission orders.** A tariff filed in response to a commission order must include a transmittal letter affirming that the tariff is in compliance with the order, provide the control number, date of the order, a list of tariff sheets filed, and any other necessary information. The tariff sheets must comply with all other rules of this title and must include only the changes ordered. The effective date or wording of the tariffs must comply with the provisions of the order.

(i) **Symbols for changes.** Each proposed tariff sheet must contain notations in the right-hand margin indicating each change made. Notations to be used are: (C) to denote a change in regulations; (D) to denote discontinued rates or regulations; (E) to denote the correction of an error made during a revision, such as the revision which resulted in the error must be one connected to some material contained in the tariff prior to the revision; (I) to denote a rate increase; (N) to denote a new rate or regulation; (R) to denote a rate reduction; and (T) to denote a change in text, but no change in rate or regulation. Each changed provision in the tariff must contain a vertical line in the right-hand margin of the page which clearly shows the exact number of lines being changed.

(j) **Availability of tariffs.** Each utility must make available to the public electronically and at each of its business offices or designated sales offices within Texas, each tariff that is

currently on file with the commission. The utility must assist persons seeking information on its tariffs and permit such persons the opportunity to examine any tariff upon request. The utility must also provide copies of each of its tariffs at a reasonable cost.

§26.208. General Tariff Procedures.

(a) **Application.** This section establishes the process for commission review of a dominant certificated telecommunications utility (DCTU) tariff and tariff amendments. A DCTU must meet the requirements of this section to file a new tariff or amend an existing tariff to which this section applies, including changes to a rate or service, the types of service provided, jurisdiction or service area, or for the withdrawal of a service. For purposes of this section, the term "trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(1) This section applies to a DCTU and to an affiliate of a DCTU or a trade association that elects to file or amend a tariff on a DCTU's behalf, and to each tariff filed by those entities in accordance with §26.207 of this title (relating to Form and Filing of Tariffs) and the following provisions, as applicable:

(A) section 26.209 of this title (relating to New and Experimental Services) or §26.210 of this title (relating to Promotional Rates for Local Exchange Company Services), if determined to be necessary by the presiding officer; or

(B) section 26.211 of this title (relating to Rate Setting Flexibility for Services Subject to Significant Competitive Challenges).

(2) This section does not apply to a person, or a tariff submitted by a person, to which §26.89 of this title (relating to Nondominant Carriers' Obligations Regarding Information on Rates and Services) or §26.171 of this title (relating to Small Incumbent Local Exchange Company Regulatory Flexibility) applies.

(3) For purposes of this section, "major rate change" means an increase in rates that would increase the aggregate revenues of an applicant more than $100,000 or two and a half percent, whichever is greater. The term does not include an increase in rates approved by the commission, or otherwise ordered by the commission after hearings are held with public notice.

(b) **General tariff requirements.**

(1) **DCTU tariff amendments involving a major rate change.** For a tariff amendment involving a major rate change, an applicant must meet the following requirements prior to amending its tariff.

(A) File an application with the commission at least 35 days before the effective date of the proposed change to the DCTU's tariff;

(B) Provide notice to affected persons, including each municipality and customer affected by the change, in the manner prescribed by subsection (c) of this section, or as otherwise required by the presiding officer; and

(C) If applicable, publish notice of the DCTU's intent to change rates in accordance with PURA §53.103, as provided under subsection (c)(1)(C)(i) and (ii) of this section. Notice under this subparagraph is waived if the rate change only involves a rate reduction.

(2) **Non-major rate changes and other DCTU tariff amendments.** For a tariff amendment that does not involve a rate change under paragraph (1) of this

subsection, a DCTU must meet the following requirements prior to amending its tariff:

(A) File an application with the commission at least 35 days before the effective date of the proposed change to the DCTU's tariff; and

(B) Provide notice to affected persons in the manner prescribed by subsection (c) of this section or as otherwise required by the presiding officer. An applicant may request a waiver to this requirement if the tariff amendments are of an administrative or clerical nature, or have minimal or no impact to the public, as determined by the presiding officer.

(c) **Public notice.** An application must include plans to provide public notice of the tariff filing.

(1) **General requirements for public notice.**

(A) Prior to the issuance of notice, an applicant may request, or the presiding officer may require, the contents of the notice to be reviewed and approved by the presiding officer.

(B) Notice must be written in plain language and must contain sufficient detail to provide each affected person, including each affected municipality, adequate notice of the filing.

(C) Notice may be provided electronically unless otherwise required by the presiding officer or, if the application involves a major rate change, in accordance with PURA §53.103, which requires the applicant to:

(i) publish, in a conspicuous form and place, notice to the public of the proposed change once each week for four successive weeks before the effective date of the proposed change in a newspaper having general circulation in each county containing territory affected by the proposed change; and

(ii) mail notice of the proposed change to any other affected person as required by the commission's rules.

(D) The presiding officer may require notice to be provided to the public in addition to that proposed by the DCTU.

(2) **Content of public notice.** Public notice of the application must include at a minimum:

(A) a description of each service or proposed service and each applicable rate;

(B) the proposed effective date of the service or, if the service is promotional or experimental, the time period during which the promotional rates are proposed to be in effect;

(C) each customer class likely to be affected if the application is approved

(D) the probable effect on the DCTU's revenues if the service is approved; and

(E) the following language: "Persons with questions or who want more information on this application may contact (DCTU name) at (DCTU address) or call (DCTU toll-free telephone number) during normal business hours. A complete copy of the application is available for inspection at the address listed above. The commission has assigned Control Number (provided by DCTU) to this application, located at (hyperlink to application). Persons who wish to formally participate in the commission's

proceedings concerning this application, or who wish to express their comments concerning this application should contact the Public Utility Commission of Texas, Consumer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission's Office of Consumer Protection at (512) 936-7120 or, toll free, at (888) 782-8477. Hearing- and speech-impaired individuals may contact the commission through Relay Texas at (800) 735-2989. Requests to participate in the proceedings and comments should reach the commission no later than (date, 20 days after the application was filed)."

(d) **Proof of notice.** An application must include a statement indicating the date public notice was completed in accordance with subsection (c) of this section and a copy of the issued notice.

(e) **Effective date of tariff amendment.**

(1) **General standard.**

(A) The effective date of an applicant's tariff must be no earlier than 35 days after the date a sufficient application is approved by the presiding officer.

(B) On the presiding officer's own motion or at the request of the applicant, an alternative effective date may be established unless a specific effective date is required under this section or other law.

(2) **Early effective date.** Upon a showing of good cause by the applicant, the presiding officer may approve a sufficient application, other than an application involving a major rate change, to take effect prior to the 35-day period prescribed by paragraph (1) of this subsection.

(A) The presiding officer may establish additional conditions, such as notice, that an applicant must meet prior to granting an early effective date. Any additional conditions prescribed by the presiding officer are subject to suspension of the effective date under paragraph (4) of this subsection.

(B) Upon approval of an early effective date by the presiding officer, the applicant must immediately revise the tariff to include the change.

(3) **Recalculation of effective date upon cure of an insufficient application**. Upon the filing of an application curing each deficiency specified by the presiding officer, any deadlines must be determined from the date the application is deemed sufficient or from the effective date if the presiding officer extends that date.

(4) **Suspension of effective date.** For an application involving a rate change, the commission may suspend the effective date of the tariff change for 150 days after the requested effective date.

(A) In the event that a hearing on the merits exceeds 15 working days, the suspended effective date is extended two calendar days for each working day the hearing exceeds 15 working days.

(B) If the presiding officer does not make a final determination concerning the effective date of a rate change before the expiration of the suspension period, the effective date is automatically approved unless a hearing is already in progress.

(f) **Administrative review.** An application filed in accordance with this section will be reviewed administratively.

(1) **Review of sufficiency.**

(A) The presiding officer will deem an application to be sufficient if it, at a minimum:

(i) includes an effective date and, as applicable, meets the requirements of subsection (b)(1)(A) or (2)(A) of this section;

(ii) meets the requirements of §26.207 of this title and the applicable provision specified by subsection (a)(1) of this section under which the application was filed;

(iii) includes proof that notice of the application was provided in compliance with subsection (d) of this section; and

(iv) if the application involves the withdrawal of a service, that the requirements of subsection (i) of this section have been met.

(B) No later than 20 days after the date an application is filed:

(i) an interested person, including the Office of Public Utility Counsel (OPUC), may file written comments or recommendations concerning the sufficiency of the application; and

(ii) commission staff must file a recommendation regarding the sufficiency of the application.

(C) If the presiding officer concludes that the application is insufficient, the presiding officer will notify the applicant of the insufficiency in the relevant portions of the application and cite the particular requirement with which the application does not comply. The presiding officer will grant the applicant an opportunity to cure each specific deficiency within a specified time period, and change the effective date in accordance with subsection (e)(3) of this section.

(2) **Substantive review of application**. The presiding officer must approve or deny an application not later than 60 days after a complete application is filed. An application is complete if the presiding officer has deemed that the application is sufficient under paragraph (1) of this subsection.

(A) The presiding officer will substantively review the application to determine whether the application fulfills the requirements of this subparagraph and other applicable law. To approve an application, the presiding officer must, at a minimum, determine that:

(i) the proposed rates and terms of the service are not unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive; and

(ii) provision of the service is consistent with the public interest in a technologically advanced telecommunications system, the preservation of universal service, and the prevention of anticompetitive practices and of subsidization of new and experimental services with revenues from regulated monopoly services.

(B) Commission staff must file a recommendation regarding whether the application meets the substantive requirements of this paragraph. Commission staff's recommendation on whether an application meets the substantive requirements for administrative approval may be provided with its recommendation on the sufficiency of the application in accordance with paragraph (1) of this subsection, or in a subsequent filing.

(C) While the application is under substantive review by the presiding officer, commission staff and OPUC may submit requests for information to the applicant.

(i) Notwithstanding the requirements of §22.144 of this title (relating to Requests for Information and Requests for Admission of Facts), the applicant must file the requested information with the commission within 15 days after receipt of such a request for information.

(ii) If an applicant does not respond to a request for information within the time period specified by clause (i) of this subparagraph, the presiding officer will reject the application without prejudice and notify the applicant of the rejection.

(iii) If the presiding officer does not approve or deny the application within 30 days from the date the requested information is filed with the commission, the application is automatically approved.

(3) **Automatic approval.** A complete application is automatically approved 60 days from the date it is filed if:

(A) the presiding officer does not approve or deny the complete application; and

(B) commission staff or the presiding officer do not request supplemental information from the applicant.

(4) **Docketing prohibited.** An application, except for an application involving a rate increase as provided by subsection (h) of this section, cannot be docketed.

(g) **Approval or denial of applications.** For an application to be approved, the applicant must meet the requirements of the applicable provisions of this section and other applicable law, unless such requirements are modified or waived by the presiding officer. If, based on the administrative review, the presiding officer determines that:

(1) all requirements not waived have been met, the application will be approved in the manner specified by the presiding officer.

(2) one or more of the requirements not waived have not been met, the presiding officer will:

(A) dismiss the application without prejudice; or

(B) docket the application in accordance with subsection (h) of this section if the application involves a rate change, except for a rate change covered by §26.171 of this title.

(h) **Docketing and of an application involving a rate change.** The presiding officer may docket an application involving a rate change, except for a rate change covered by §26.171 of this title, in accordance with this section.

(1) If an application is docketed, the presiding officer may suspend the effective date of a rate change in the manner provided by subsection (e)(4) of this section via order.

(1) A copy of all answers to requests for information issued after docketing must be filed with the commission within 15 days after receipt of the request.

(2) An affected person may move to intervene in the docket, and a hearing on the merits will be scheduled.

(3) The application will be processed in accordance with the commission's rules applicable to docketed proceedings.

(i) **Withdrawal of a service.** When an applicant seeks to withdraw a tariffed service, the application must be filed in accordance with this subsection. An applicant must provide the following in its application before withdrawing a service.

(1) The control number for the project where the tariff was filed, including a hyperlink to the project;

(2) Proof of notice by the applicant, as required by subsection (d), or as otherwise required by the presiding officer.

(3) The number of current customers in each exchange, by customer class;

(4) The reason for withdrawing the service;

(5) Provisions for grandfathering each current customer or for competitive alternatives available within the exchange locations, including each alternative provided by the DCTU;

(6) Annual revenues for the last three years for the service; and

(7) If the service has no current customers, the applicant must provide an affidavit to this effect.

§26.209. New and Experimental Services.

(a) **Application.** This section applies to dominant certificated telecommunications utilities (DCTUs), as that term is defined by §26.5 of this title (relating to Definitions).

(1) The services to which this section applies are those that are a subset of a service for which the utility is dominant.

(2) A DCTU may alternatively seek approval for an application for a new or experimental service in accordance with §26.208 of this title (relating to General Tariff Procedures), however the presiding officer may require any application for a new or experimental service to also comply with the requirements of this section.

(3) If an application for a new or experimental service is reviewed under this section, each rate established for such a service must comply with the requirements of §26.208 of this title.

(b) **Purpose.** The procedures in this section establish the process by which a DCTU obtains approval to offer new and experimental services.

(c) **Filings requesting approval of new and experimental services.** A DCTU may request approval of a new or experimental service by following the procedures outlined in this section. Not later than 35 days prior to the proposed effective date of the new or experimental service, the DCTU must file with the commission an application containing the following information:

(1) a statement of intent by the DCTU to use the procedures established in this section;

(2) a description of the proposed service and the rates, terms and conditions under which the service is proposed to be offered;

(3) the proposed effective date of the service;

(4) a statement detailing the type of notice, the utility has provided or intends to provide to the public regarding the application and a brief statement explaining why the DCTU's notice proposal is reasonable and in compliance with §26.208 of this title;

(5) a copy of the notice, if any;

(6) detailed documentation showing that the proposed service is priced above the long run incremental cost of such service. The commission will allow an incumbent local exchange carrier (LEC) that is not a Tier 1 LEC as of September 1, 1995, at that company's option, to adopt the cost studies approved by the commission for a Tier 1 LEC. The application must also include projections of revenues, demand, and expenses demonstrating that in the second year after the service is first offered, the proposed rates will generate sufficient annual revenues to recover the annual long run incremental costs of providing the service, as well as a contribution for joint or common costs. Capital costs related to providing the service must be separately identified in these projections. The application must also include all workpapers and supporting documentation relating to computations or assumptions contained in the application.

(7) If the application concerns a service which will not initially be offered system-wide, the application must separately explain for each exchange in which the service will not be offered why the DCTU's facilities in that exchange do not have the technical capability to handle the service.

(8) The application must also include:
(A) an implementation plan which must specify the DCTU's plans for making the service available in such exchanges within a reasonable time after receipt by the LEC of a bona fide request for the service.
(B) what requirements must be met for a request for service to be considered bona fide. This requirement does not apply to experimental services, but the DCTU must specify the exchanges in which it proposes to offer the experimental service.
(9) If the application concerns an experimental service for which a range of rates is proposed, the application must state the range of rates requested and show in detail how the upper and lower rates in that range relate to the long run incremental cost of the service.
(10) Any other information which the DCTU wants considered in connection with the commission's review of its application.

(d) **Modifications and waivers of requirements.**
(1) In its application a DCTU may request:
(A) the modification or waiver of requirements set forth in this section concerning system-wide rates;
(B) system-wide provision of service;
(C) the one-year maximum period for offering an experimental service; the one-year, cost-related prove-in period;
(D) or long run incremental cost support.
(2) Subsequent to the introduction of an experimental service, a DCTU may also apply for modification of the period initially approved for offering the service, provided that:
(A) An experimental service will not be approved for more than two years;
(B) A prove-in period will not be extended beyond two years and;
(C) As an alternative to providing incremental cost information, the DCTU must provide other cost support demonstrating that the proposed rates for the service will recover its costs plus a contribution within the required period.
(3) A waiver of the incremental cost standard must only be granted if the presiding officer determines that such a standard imposes an unreasonable burden on a DCTU which has inadequate resources to produce the required cost information to meet that standard and if the presiding officer determines that an appropriate alternative cost standard is available.
(4) Any request for modification or waiver of these requirements must include a complete statement of the DCTU's arguments supporting that request. The presiding officer will rule on the waiver request within 15 days of the filing of the request.

(e) **Requirements for proposed new and experimental services.** Unless waived or modified by the presiding officer as provided under subsection (d) of this section, the following requirements must apply to any new service approved under this section:
(1) Such new service must be offered at the same price throughout the DCTU's system.

(2) The service must also be offered in every exchange served by the DCTU, except exchanges in which the DCTU's facilities do not have the technical capability to handle the service.

(3) The rates for a new service must be designed to generate sufficient annual revenues to recover the annual long run incremental cost of the service, including a contribution for joint or common costs, in the second year after it is first offered. Requirements related to system-wide pricing and system-wide provision of service do not apply to a proposed experimental service.

(4) An experimental service approved under this section may be flexibly priced provided that the minimum rate in the range of rates must be above the long run incremental cost of providing the service. The DCTU may make a change in rates within an approved range of rates upon such notice to customers and the commission as the presiding officer may require. In addition, before discontinuing provision of an experimental service, the DCTU must give such notice of the discontinuation as the presiding officer may require.

(f) **Reporting requirements.**

(1) If a new service is approved, the DCTU must file with the commission

(A) tracking reports showing the actual revenues;

(B) demand and related expenses for the service;

(C) its progress on the implementation plan, if any such plan was approved by the commission;

(D) and such other information as may be required by the presiding officer or requested by the commission staff.

(2) Reports filed under this section must be filed as specified by this paragraph, unless otherwise excepted by paragraph (3) of this subsection

(A) The initial report is due nine months after the service is first offered and must contain information for at least the first six months the service was offered.

(B) The second such report must be filed 12 months after the service is first offered and must contain information for at least the first nine months the service was offered.

(C) The third such report must be filed no later than 15 months after the service is first offered and must contain information for at least the first 12 months the service was offered.

(3) Such reporting requirements are waived for experimental services of one year's duration or less, but the DCTU must retain in its record such information related to revenues, demand and expenses and must submit such information with any subsequent request to make a formerly experimental service a permanent new service.

(g) **Subsequent review of the service.** Except as prohibited by Chapters 58 or 59 of the Public Utility Regulatory Act, if a new or experimental service is approved, commission staff or any affected person may file with the commission a petition seeking modification of the rates or terms under which the service is offered or withdrawal of the service.

(h) **Provisions for SLECs.** Notwithstanding §26.208 of this title and subsections (c), (d), and (e) of this section, the provisions of this subsection apply to a small local exchange company (SLEC) as defined in §26.5 of this title (relating to Definitions). If the presiding officer determines that the SLEC is seeking to adopt as its rates for its new or experimental services the rates for the same or substantially similar services offered by an ILEC:

(1) the SLEC's proposed rates and terms of the service will be deemed not to be unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive; and

(2) a waiver of the incremental cost standard will be granted.

§26.210. Promotional Rates for Local Exchange Company Services.

(a) **Application.** This section applies to dominant certificated telecommunications utilities (DCTUs) as that term is defined by §26.5 of this title (relating to Definitions) which are subject to the ratemaking jurisdiction of the commission for any service or market.

(1) A DCTU may alternatively seek approval for an application for a promotional rate in accordance with §26.208 of this title (relating to General Tariff Procedures), however the presiding officer may require any application for a promotional rate to also comply with the requirements of this section.

(2) If an application for a promotional rate is reviewed under this section, each promotional rate must comply with the requirements of §26.208 of this title.

(b) **Purpose.** The procedures outlined in this section are intended to establish a process by which DCTUs may obtain authorization for offering promotional rates for the purpose of increasing long term demand for a service or utilizing unused capacity of the DCTU's network.

(c) **Filings requesting approval of promotional rates.** After the effective date of this section, a DCTU may request approval of promotional rates for a service by following the procedures outlined in this section. Not later than 35 days prior to the proposed effective date of the promotional rate, the DCTU must file with the commission an application containing the following information:

(1) a statement of intent by the DCTU to use the procedures established in this section;

(2) a description of the specific proposed or tariffed service for which promotional rates are proposed and a description of the temporary rates for such service proposed by the DCTU;

(3) if the promotional rates are proposed to be offered on less than a system-wide basis as provided in subsection (d) of this section, a description of the locations for which the promotional rates are proposed:

(4) the starting date and ending date of the period over which the promotional rates are proposed to be offered;

(5) a description of all time periods during the five years preceding the filing of this application for which promotional rates were offered for the service as authorized under this section;

(6) a statement detailing the type of notice, if any, the DCTU has provided or intends to provide to the public regarding the application and a brief statement explaining why the DCTU's notice proposal is reasonable and in compliance with §26.208 of this title;

(7) a copy of the notice;

(8) detailed documentation showing the long run incremental cost of the service for which promotional rates are requested, including projections of revenues, demand and expenses of the service for the period during which the promotional rates are proposed to be offered. The commission will allow an incumbent local exchange company (LEC) that is not a Tier 1 LEC as of September 1, 1995, at that company's option, to adopt the cost studies approved by the commission for a Tier 1 LEC. The application must include projections of the effect of the promotional rate on the

service's revenues and cost and its impact on the service's contribution during the promotional period and over the remaining life of the service. The application must also include all workpapers and supporting documentation relating to computations or assumptions contained in the application; and

(9) any other information which the DCTU wants considered in connection with the commission's review of its application.

(d) **Modification and waivers of requirements.** In its application a DCTU may request the waiver of the long run incremental cost requirements set forth in this section. Such a waiver will only be granted if the presiding officer determines that the long run incremental cost standard imposes an unreasonable burden on a DCTU which has inadequate resources to produce the required cost information to meet the standard and if the presiding officer determines that an appropriate alternative cost standard is available. If the long run incremental cost standard is waived, the DCTU must provide other cost information showing the relationship between its proposed promotional rates and the costs of providing the service. A DCTU may also request a waiver of the requirement that promotional rates be offered in every exchange when such rates are proposed to be offered for a tariffed service which is being expanded into central offices which previously did not provide the service. Any request for waiver of the long run incremental cost information requirement or the system-wide application of the promotional rates requirement must include a complete statement of the DCTU' arguments supporting that request.

(e) **Notice of intent to file.** At least ten days before any application under this section may be filed by a DCTU, the DCTU must file a statement of intent to file such an application and the expected filing date. Such notice must also include a statement of the DCTU's intent to use the expedited procedures of this section, a description of the service, and a description of the proposed promotional rates and the proposed promotional period. The commission must then publish notice of the DCTU's intent to file such application in the *Texas Register*.

(f) **Requirements for promotional rates.** Unless waived or modified by the presiding officer as provided in subsection (d) of this section, the following requirements must apply to promotional rates approved under this section:

(1) the promotional rates must be offered in every exchange in which the service is offered throughout the DCTU's system;

(2) promotional rates for any particular service in any specific exchange must not be offered for more than six months during any five-year period, and no customer must be charged promotional rates for more than three consecutive months;

(3) promotional rates must be offered only to new customers of a service or to new and existing customers, provided that, for existing customers, the promotional rates must only apply to additional units of service ordered during the promotional rate period; and

(4) the promotional rate must be designed to generate sufficient revenue to recover the long run incremental cost of providing the service (or, if the long run incremental cost standard is waived, such other costs as are approved by the commission) within one year of introduction of the promotional rate. If the proposed promotional rate

is for the reduction or elimination of an installation charge or service connection charge, the revenue and costs related to provision of the entire service must be used in determining whether the cost standard for the service is met. If the proposed promotional rate is for a service whose tariffed rate does not recover the costs of providing the service, a promotional rate may be approved if the DCTU can demonstrate that the promotional rate will move the service closer to full cost recovery. However, no promotional rate must be approved for a service whose tariffed rate does not recover the cost of the service if such service has been found to be subject to significant competition under §26.211 of this title (related to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges) or if the service is enumerated in the Public Utility Regulatory Act §52.057. The commission may approve a promotional rate even if it does not provide a contribution to joint and common costs.

(g) **Notification to the public of services to be offered at promotional rates.** If promotional rates for a service are approved under this section, all advertising related to such service and its promotional rates must clearly describe the temporary nature of the rate, the date on which the promotional rate will expire, and the rate which will apply after expiration of the promotional rate. The DCTU must provide the same information to all customers requesting rate information for such service or ordering the service during the period the promotional rates are in effect.

(h) **Reporting requirements.** If promotional rates are approved, the DCTU must file with the commission a report showing the actual revenues, demand and related expenses and investment for the service over each period promotional rates are in effect. This report must be filed with the commission within three months after each authorized period for offering promotional rates has expired.

(i) **Treatment of revenues and expenses related to promotional rates in subsequent rate cases.** In any subsequent rate case in which a service was offered at promotional rates during the test year, the revenues attributed to such service must be adjusted upward to reflect the revenues which would have been collected if all customers who were charged the promotional rate had been charged the permanent tariffed rate over the promotional period.

(j) **Subsequent review of the promotional rates.** If promotional rates for a service are approved under the procedures set forth in this section, the commission's Office of Regulatory Affairs, the Office of Public Utility Counsel, or any affected person may file with the commission a petition seeking modification of the rates or terms under which the promotional rate is offered or withdrawal of the promotional rate. If multiple promotional rate periods are approved for a service under the provisions of this section and if the reports filed in accordance with subsection (h) of this section indicate that the rates for the service did not recover the costs of the service as required in subsection (f) of this section, the commission must initiate an inquiry into the reasonableness of such promotional rates and must suspend those rates pending the completion of the inquiry.

(k) **Provisions for SLECs**. Notwithstanding §26.208 of this title and subsections (c), (d), and (f) of this section, the provisions of this subsection apply to a small local exchange company (SLEC) as defined in §26.5 of this title (relating to Definitions). If the presiding officer determines that the SLEC is seeking to adopt as its promotional rates for its services the rates for the same or similar services offered by an incumbent local exchange carrier:

(1) the SLEC's proposed rates and terms of the service will be deemed not to be unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive; and

(2) a waiver of the incremental cost standard will be granted.

§26.211. Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges.

(a) **Application.** The provisions of this section apply to an incumbent local exchange company (ILEC) . This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under PURA §52.154.

(b) **Purpose.** The purpose of this section is to establish procedures for pricing flexibility for services subject to competition and a process for commission review of pricing flexibility applications.

(c) **Pricing flexibility.**

(1) **Eligible services.** An ILEC may request the types of pricing flexibility established by this subsection.

(A) **Banded rates.** If an ILEC is granted the authority to charge banded rates, the minimum rates must yield revenues that are equal to or greater than 105% of the long run incremental cost of the service in the geographic market in which the service will be provided.

(i) When an ILEC is granted the authority to charge banded rates, the ILEC must file a tariff showing the minimum and maximum rates and specifying its current rate. The current rate specified in the ILEC's tariff must be applied uniformly to all customers of the service in each exchange for which the commission has approved banded rates.

(ii) If the ILEC desires to charge a rate different from its current rate, but between the minimum and maximum rates, it must file a revised tariff on or before the effective date of the rate change.

(iii) The minimum and maximum rates may only be changed as provided for in the Public Utility Regulatory Act, Chapter 53, Subchapters C and D, or G.

(B) **Detariffing.** If an ILEC is granted the authority to detariff a service, the ILEC must maintain at the commission a current price list for the service, and the commission must retain authority to regulate the quality, terms and conditions of the detariffed service, other than rates. The commission may determine the appropriate ratemaking treatment of any revenues from or costs of providing a detariffed service in a proceeding under the Public Utility Regulatory Act, Chapter 53, Subchapters C and D, or G.

(C) **Other types of pricing flexibility.** If an ILEC is granted the authority to engage in a type of pricing flexibility that the commission finds to be in the public interest other than those specified in subparagraphs (A)-(B) of this paragraph, that pricing flexibility must be offered under such terms and conditions as the commission orders.

(2) **Other services.** ILECs have the authority to enter into customer-specific contracts for those services specified in subsection (d) of this section. For those services, ILECs may apply for pricing flexibility for the services specified in paragraph (1) of this subsection, other than customer-specific contracts. For other services,

ILECs may apply to the commission in accordance with this subsection to obtain any type of pricing flexibility specified in paragraph (1) of this subsection. Nothing in this subsection permits an ILEC to:

(A) obtain pricing flexibility for basic local telecommunications service, including local measured service, or for any service that includes as a component a service not subject to significant competitive challenge; or

(B) enter into customer-specific contracts or to obtain detariffing with respect to message telecommunications services, switched access services, or wide area telecommunications service.

(3) **Requirements for application.** An application for pricing flexibility filed under this paragraph must:

(A) include a statement of the ILEC's intention to use the procedures established in this subsection;

(B) specify the type of pricing flexibility requested and, if the type of pricing flexibility requested is either banded rates or some other type of pricing flexibility in accordance with paragraph (1)(C) of this subsection that involves rate-setting;

(i) state the proposed rates, and if the type of pricing flexibility is banded rates, state the maximum and minimum rates;

(ii) include detailed documentation demonstrating that the minimum rates yield revenues that are equal to or greater than 105% of the long run incremental cost of the service in the geographic market in which the service will be provided;

(iii) demonstrate that the rates are not unreasonably preferential, prejudicial or discriminatory;

(iv) demonstrate that the rates are such that the service identified in accordance with to subparagraph (C) of this paragraph will not be subsidized directly or indirectly by regulated monopoly services; and

(v) demonstrate that the rates are not predatory or anticompetitive;

(C) identify the service for which the ILEC is requesting pricing flexibility, including each component of the service, and provide functional and technical descriptions of the service, including:

(i) the functions that the service is intended to perform for the customer;

(ii) the types of equipment used to provide the service (including, but not limited to, transmission facilities, switching facilities, customer equipment, software functions, and protocol);

(iii) the network configurations used to provide the service; and

(iv) schematics;

(D) identify each service that is not subject to significant competitive challenge but that, at the time the ILEC files its application for pricing flexibility, the ILEC intends to provide as a tariffed adjunct to the service identified in subparagraph (C) of this paragraph and, for each such service, provide:

(i) functional and technical descriptions; and

(ii) citations to the tariff provisions under which each such service will be provided;

(E) designate each exchange as to which the ILEC is seeking pricing flexibility;

(F) include a map or maps of each exchange designated in accordance with subparagraph (E) of this paragraph that can be coordinated with the official commission boundary maps;

(G) describe the products or services known to the ILEC that are currently available in each exchange designated in accordance with subparagraph (E) of this paragraph, and that are the same, equivalent, or substitutable for the service identified in accordance with subparagraph (C) of this paragraph, and identify the providers of those products or services;

(H) with respect to the products or services described in accordance with subparagraph (G) of this paragraph, discuss:

(i) the number and size of telecommunications utilities or other persons providing such products or services;

(ii) the extent to which such products or services are available;

(iii) the ability of customers to obtain such products or services at rates, terms, and conditions comparable to those that the ILEC will offer;

(iv) the ability of telecommunications utilities or other persons to make such products or services readily available at rates, terms, and conditions comparable to those that the ILEC will offer; and

(v) the existence of any significant barrier to the entry or exit of a provider of such products or services;

(I) demonstrate that the level of competition with respect to all components of the ILEC's service identified in accordance with subparagraph (C) of this paragraph represents a significant competitive challenge within each exchange designated in accordance with subparagraph (E) of this paragraph that warrants the pricing flexibility specified in accordance with subparagraph (B) of this paragraph;

(J) demonstrate that the service identified in accordance with subparagraph (C) of this paragraph is not basic local telecommunications service, including local measured service;

(K) if the type of pricing flexibility requested in accordance with subparagraph (B) of this paragraph is customer-specific pricing or detariffing, demonstrate that the service identified in accordance with subparagraph (C) of this paragraph is not message telecommunications service, switched access service, or wide area telecommunications service;

(L) to prevent the subsidization of the service identified in accordance with subparagraph (C) of this paragraph with revenues from regulated monopoly services, propose mechanisms to recover costs that may not be identified and recovered in a long run incremental cost study, including but not limited to costs associated with advertising, unsuccessful bids, and all items of plant used in the provision of the service;

(M) identify and address the impact that approval of the application for pricing flexibility may have on universal service;

(N) for any type of pricing flexibility other than detariffing, include proposed tariffs and identify any tariff language that restricts the resale, sharing, or joint use of the service identified in accordance with subparagraph (C) of this paragraph and any component of the service and demonstrate why such restrictive tariff language is consistent with the policy established in the Public Utility Regulatory Act §52.001; and

(O) include any other information that the ILEC wants considered in connection with the review of its application.

(4) **Tier 1 LECs**. The commission will allow an incumbent LEC that is not a Tier 1 LEC as of September 1, 1995, at that company's option, to adopt the cost studies approved by the commission for a Tier 1 LEC.

(5) **Notice filing.** An ILEC may, in accordance with §26.227 of this title (relating to Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58 Electing Companies.), submit an informational notice filing to introduce a service or exercise pricing flexibility to which this section applies. An informational notice filing must also comply with §26.228 of this title (relating to Requirements Applicable to Pricing Flexibility for Chapter 58 Electing Companies) or §26.229 of this title (relating to Requirements Applicable to Chapter 52 Companies) as applicable.

(6) **Review of competition outside exchange**. For ILECs with less than 31,000 access lines, the presiding officer will not be limited under paragraph (7)(D)(i)-(x) of this subsection to considering only competition within each exchange where the ILEC will provide the service. In accordance with paragraph (3)(O) of this subsection, an ILEC with less than 31,000 access lines may provide information that addresses the criteria of paragraph (3)(G)-(I) of this subsection with respect to products or services available outside each exchange designated in paragraph (3)(E) of this subsection.

(7) **Application requirements.** An application for pricing flexibility will be approved if, after commission review the commission determines that:

(A) no service for which pricing flexibility is sought is basic local telecommunications service, including local measured service;

(B) no service for which the ILEC requests detariffing of rates is message telecommunications service, switched access service, or wide area telecommunications service

(C) no service for which pricing flexibility is sought includes a component that is not subject to significant competitive challenge;

(D) the grant of pricing flexibility for the service identified in accordance with paragraph (3)(C) of this subsection within each designated in accordance with paragraph (3)(E) of this subsection is appropriate to allow the ILEC to respond to a significant competitive challenge, based upon consideration of the following:

(i) the number and size of telecommunications utilities or other persons providing the same, equivalent, or substitutable service within each exchange designated in accordance with paragraph (3)(E) of this subsection;

(ii) the extent to which the same, equivalent, or substitutable service is available within each exchange designated in accordance with paragraph (3)(E) of this subsection;

(iii) the ability of customers to obtain the same, equivalent, or substitutable services at comparable rates, terms, and conditions within each exchange designated in accordance with paragraph (3)(E) of this subsection;

(iv) the ability of telecommunications utilities or other persons to make the same, equivalent, or substitutable service readily available at comparable rates, terms, and conditions within each exchange designated in accordance with paragraph (3)(E) of this subsection;

(v) the existence of any significant barrier to the entry or exit of a provider of the same, equivalent or substitutable services within each designated in accordance with paragraph (3)(E) of this subsection;

(vi) whether there are mechanisms to minimize potential anti-competitive practices, to the extent that any such practice has been identified in the record;

(vii) whether there are mechanisms to prevent the subsidization of the service with revenues from regulated monopoly services;

(viii) whether the ability of the ILEC to flexibly price the service within each designated exchange would have any significant impact on universal service;

(ix) whether the type of pricing flexibility requested is appropriate in light of the level and nature of competition within each exchange where the ILEC will provide the service; and

(x) any other relevant information contained in the record;

(E) the rates, if the type of pricing flexibility granted is either banded rates or some other type of pricing flexibility in accordance with paragraph (1)(C) of this subsection that involves rate-setting, are just and reasonable and:

(i) yield revenues that are equal to or greater than 105% of the long run incremental cost of the service in the geographic market in which the service will be provided;

(ii) are not unreasonably preferential, prejudicial or discriminatory;

(iii) are such that the service will not be subsidized directly or indirectly by regulated monopoly services; and

(iv) are not predatory or anticompetitive.

(8) **Alternative relief.** Nothing in this subsection prevents the presiding officer from approving relief other than that requested in the application.

(d) **Customer-specific contracts.** An ILEC may enter into customer-specific contracts for:

(1) central office based PBX-type services for systems of 200 stations or more, as those services compete with customer premises equipment provided by PBX vendors;

(2) billing and collection services;

(3) high-speed private line services of 1.544 megabits or greater;

(4) customized services that are unique because of size or configuration, provided that such customized services do not include basic local telecommunications service, including local measured service, or message telecommunications services, switched access services, or wide area telecommunications service; and

(5) any other service for which the commission has authorized the ILEC to enter into customer- specific contracts in accordance with this section.

(e) **Subsequent review**. The commission may modify, or revoke, upon notice and hearing, the authorization of any type or types of pricing flexibility granted in accordance with this section.

§26.214. Long Run Incremental Cost (LRIC) Methodology for Services provided by Certain Incumbent Local Exchange Companies (ILECs).

(a) **Application.** This section applies to ILECs with annual revenues from regulated telecommunications operations in Texas of less than $100 million for five consecutive years.

(b) **Purpose.** This section will be used to determine the long run incremental costs incurred by ILECs in the provision of telecommunications services in those instances in which the ILEC chooses to establish LRIC studies.

(c) **LRIC studies.** An ILEC may establish a service's LRIC by submitting a LRIC cost study that conforms to the following general requirements:

(1) A LRIC study must identify the ILEC's investment in all facilities that reflect forward looking least cost technology, as set forth in §26.215(f)(3) of this title (relating to Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility (DCTU) Services), used in the provision of the service.

(2) A LRIC study must apply appropriate loading and fill factors associated with the service.

(3) A LRIC study must apply appropriate annual cost factors, including but not limited to depreciation and cost of money, associated with the service.

(4) A LRIC study must identify non-capital costs associated with the service, including but not limited to maintenance, billing and collection, and marketing costs.

(d) **Procedures for review of LRIC studies filed under subsection (c) of this section.** A LRIC study considered under this section will be reviewed administratively to determine whether the ILECs LRIC study is consistent with the requirements of this section.

(1) **Notice.** At least ten days before an ILEC files any LRIC study in accordance with this section, the ILEC must file with the commission and the Office of Public Utility Counsel (OPUC) a notice of its intent to file such LRIC study and the expected filing date. The ILEC's notice must indicate that the filing is being made in accordance with this section. The commission will then publish notice of the ILEC's intent to file the LRIC study in the *Texas Register*.

(2) **Sufficiency**. The LRIC study will be examined for sufficiency. To be sufficient, the LRIC study must conform to the requirements of this section.

(A) Except as required under subparagraph (B) of this paragraph, if commission staff concludes that material deficiencies exist in the LRIC study, the ILEC must be notified by commission staff of the specific deficiency within three working days after the filing date of the LRIC study. The ILEC will have two working days after the date it is notified of the deficiency to file a corrected LRIC study. On or before five working days after the date of the ILEC response, the presiding officer will issue an order with regard to the sufficiency.

(B) If the LRIC study filed for approval in accordance with this section is also filed simultaneously as part of an informational notice filing and a contested case arises as a result of the dispute regarding sufficiency of the LRIC study

filed as part of the informational notice filing, the review of the LRIC study in accordance with this section will be abated pending the resolution of the contested case.

(3) Time schedule.

(A) No later than 45 days after the filing date of the sufficient LRIC study, any party that demonstrates a justiciable interest may file with the presiding officer written comments or recommendations concerning the LRIC study.

(B) No later than 55 days after the filing date of the sufficient LRIC study, OPUC may file with the presiding officer written comments or recommendations concerning the LRIC study.

(C) No later than 65 days after the filing date of the sufficient LRIC study, commission staff must file with the presiding officer written comments or recommendations concerning the LRIC study.

(D) No later than 75 days after the filing date of the sufficient LRIC study, any party that demonstrates justiciable interest, OPUC, or the ILEC may file with the presiding officer a written response to the commission staff's recommendation.

(E) No later than 85 days after the filing date of the sufficient LRIC study, the presiding officer will issue a notice stating whether the ILEC's LRIC study is consistent with the requirements of this section. In this notice, the presiding officer may either approve the LRIC study or order the ILEC to refile the LRIC study incorporating all modifications recommended by the presiding officer.

(F) Any party may appeal to the commission an administrative notice by a presiding officer within seven days after the date the notice is issued. The commission will rule on any appeal added to an open meeting agenda, within 30 days after the date the appeal is filed. If the commission or a presiding officer orders a cost study to be changed, the ILEC will be ordered to make those changes within a period that is commensurate with the complexity of the LRIC study.

(G) Requests for information. While the LRIC study is being administratively reviewed, the commission staff, OPUC, and any party that demonstrates a justiciable interest may submit requests for information to the ILEC. Answers to such requests for information must be provided within ten days after receipt of the request by the ILEC to commission staff, OPUC, and any party that demonstrates a justiciable interest.

(H) Suspension. At any point within the first 45 days of the review process, the presiding officer, the commission staff, OPUC, the ILEC, or any party that demonstrates a justiciable interest may request that the review process be suspended for 30 days. The presiding officer may grant a request for suspension only upon determination that the party has demonstrated a good cause exists for the suspension.

(I) Effective date of the LRIC study. The effective date of the LRIC study is the date it is approved by the presiding officer.

§26.215. Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility (DCTU) Services.

(a) **Application.** This section must apply to DCTUs with annual revenues from regulated telecommunications operations in Texas of $100 million or more for five consecutive years. An incumbent local exchange carrier that is not a Tier 1 local exchange company as of September 1, 1995, at that company's option, may adopt the cost studies approved by the commission for a Tier 1 local exchange company.

(b) **Purpose.** This section must be used to determine the long run incremental costs incurred by DCTUs in the provision of telecommunications services. The costs determined in this section must not be used to determine a company's revenue requirement during a proceeding under Public Utility Regulatory Act, Chapter 53, Subchapters C and D or E.

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

(1) **Ancillary services —** The category of basic network functions (BNFs) (as defined in paragraph (2) of this subsection) that provide for certain activities that either support or otherwise are adjuncts to other BNFs or finished services. This category of BNFs consists of three subcategories of BNFs: Billing and Collection; Measurement; and Operator Services.

(A) Billing and collection — The subcategory of BNFs that provide for the function of compiling the information needed for customer billing, preparing the customer bill statement, disbursing the bill and collecting the customer payments.

(B) Measurement — The subcategory of BNFs that provide the functions of assembling, collating and transmitting end office switch recorded call data (occurrence and duration).

(C) Operator services — The subcategory of BNFs that provide for the provision of a number of live or mechanized assistance functions to aid customers in the following ways: obtaining customer telephone number, street address and ZIP code information (directory assistance); providing new telephone numbers or explanatory information to callers who dial numbers which have been changed or disconnected (intercepts); providing assistance to customers in completing operator handled toll or local calls (collect, credit card, third party, station-to-station or person-to-person); checking busy lines to make sure the line is not out of service (busy line verification); and interrupting busy lines (busy line interruption). These operator services are provided to end user customers as well as local exchange and interexchange carriers.

(2) **Basic network function (BNF) —** A discrete network function, which is useful either as a stand-alone function or in combination with other functions, for which costs can be identified.

(3) **Capital costs —** The recurring costs that result from expenditures for plant facilities that are capitalized. The annual capital costs consist of depreciation, cost of money, and income taxes.

(4) **Categories of BNFs —** All BNFs must fall into one of four categories of BNFs. The categories are: network access (as defined in paragraph (13) of this subsection); switching and switch functions (as defined in paragraph (16) of this subsection); dedicated and switched transport (as defined in paragraph (10) of this subsection); and ancillary services (as defined in paragraph (1) of this subsection).

(5) **Common costs —** Costs that are not directly attributable to individual cost objects. For the purposes of this section there are three types of common costs: general overhead costs; costs common to BNFs; and costs common to services.

(A) General overhead costs — Costs incurred in operating and managing the company that are not directly attributable to BNFs or services.

(B) Costs common to BNFs — Costs incurred in the provision of BNFs that can not be directly attributed to any one BNF individually but only to a category or subcategory of BNFs collectively.

(C) Costs common to services — Costs incurred in the provision of two or more services that do not vary with changes in the relative proportions of the outputs of those services. Common costs are not directly attributable to any one service individually but only to a group of services collectively. In the event a BNF is used in the provision of two or more services then the volume insensitive cost of the BNF is a cost common to the services that use the BNF. However, if the technological requirements for the provision of one service alter the least cost technology choice for common BNFs or common facilities, then the increase in costs caused by the requirements for more advanced technologies is not a common cost but a cost directly attributable to the service that alters the least cost technology choice.

(6) **Cost causation principle —** The principle that only those costs that are caused by an activity (such as a network function, service, or group of services) in the long run are directly attributable to that activity. Costs are caused by an activity, in the long run, if the costs are brought into existence as a direct result of the activity.

(7) **Cost driver —** A specific condition, under which a BNF is provided, whose change causes significant and systematic changes in the cost of providing a BNF. For example, if the cost of providing a network access channel varies with the density and size of a wire center, then density and size are cost drivers for that BNF.

(8) **Cost of debt —** The rate of interest paid on borrowed money.

(9) **Cost of money** — The weighted annual cost to the DCTU of the debt and equity capital invested in the company.

(10) **Dedicated and switched transport** — The category of BNFs that provide for dedicated or shared transmission transport between two or more DCTU switching offices or wire centers. This BNF category consists of two subcategories of BNFs: Dedicated Transport and Switched Transport.

(A) Dedicated transport — The subcategory of BNFs that provide for full period, bandwidth specific (e.g., DS-0, DS-1, DS-3) interoffice transmission paths between the originating and terminating points of channel connection.

(B) Switched transport — The subcategory of BNFs that provide for shared interoffice transmission paths between originating and terminating points of switching.

(11) **Group of services —** A number of separately tariffed services that share significant common costs (as defined in paragraph (5) of this subsection) that are necessary and unique to the provision of those services and are not directly attributable to any one service individually. This term also refers to a situation in which two or more groups of services are part of a larger group of services because of significant common costs that are necessary and unique to the provision of all the services in the group but are not directly attributable to any one group or service individually.

(12) **Measure of unit cost —** The measure of usage used to calculate unit cost for a particular BNF (for example, a minute of use of a switching function, or a quarter mile of a DS-1 network access channel). The measure of unit costs may be multidimensional; for example, it may have both time and distance components. The measure of unit cost chosen for a BNF must correspond to the basis upon which the costs of that BNF are incurred.

(13) **Network access** — The category of BNFs that accommodate access to other network functions provided by DCTUs. Access is accomplished by transmission paths between customers and DCTU wire centers. This category consists of three subcategories of BNFs: network access channel; network access channel connection; and channel performance and other features and functions.

(A) Network access (NA) channel — The subcategory of BNFs that provide the transmission path between the point of interface at the customer location and the main distribution frame, or equivalent (e.g., DSX-1, DSX-3), of a DCTU wire center.

(B) Network access (NA) channel connection — The subcategory of BNFs that provide the interface between the network access channel and the DCTU wire center switching equipment, subsequent dedicated transport equipment (dedicated interoffice circuits), or subsequent channel equipment (dedicated intraoffice circuits).

(C) Channel performance and other features and functions — The subcategory of BNFs that provide the channel functions associated with transmission or service type (e.g., analog, digital, coin, ISDN), bandwidth conversion, signaling, multiplexing, amplification, and channel performance.

(14) **Significant —** For the purposes of this section, the qualifying term significant is used to refer to instances in which costs or changes affect total study results by at least five percent. This general guideline for when costs or changes are significant may be relaxed by considering the cumulative effect of either including or excluding costs or changes from a study.

(15) **Subcategories of BNFs —** Groupings of closely related BNFs in a category of BNFs.

(16) **Switching and switch functions** — The category of BNFs that provide for switched access between two or more network access channels or between network access channels and other BNFs, such as interoffice transport. This function is accomplished through the establishment of a temporary transmission path between network access channels in the same switching office; between a network access channel and the interoffice facilities that interconnect switching offices; or between a network access channel and other BNFs. This BNF category must cover the first point of switching for a customer. This BNF category consists of three subcategories of BNFs: interoffice switching; intraoffice switching; and switching features.

(A) Interoffice switching — The subcategory of BNFs that provide for: switching between network access channels and switched transport facilities which are connected to different wire centers; and switching between network access channels and switched transport facilities when a tandem switch is used as the first point of interface to the DCTU switched network (e.g., connection of facilities from an interexchange carrier's point of network interface).

(B) Intraoffice switching — The subcategory of BNFs that provide for switching between two or more network access channels within the same wire center.

(d) **General principles.**

(1) Underlying the construction and application of this section is the recognition that the DCTU network consists of a finite number of BNFs that, when bundled in various combinations, can be used to deliver and market a vast variety of telecommunications services. Therefore, the determination of the cost of a service and the costs of a group of services under this section must involve the identification and costing of BNFs.

(2) The LRIC studies that the DCTU is required to file under this section must assume that the company is operating in the long run and employs least cost technologies, as those terms are defined in subsection (c) of this section.

(3) In order to obtain accurate LRIC study results, the DCTU must avoid the use of embedded cost data; expense items and capital costs must reflect long run incremental costs and the DCTU must justify any instance in which embedded cost data are used. Further, the fact that the costs determined under this section may differ from the company's embedded costs as determined during proceedings under the Public Utility Regulatory Act, Chapter 53, Subchapters C and D or E, should in no way cause the company to attribute any of this cost discrepancy to LRIC studies for BNFs, services, or groups of services.

(4) When a BNF is used in the provision of two or more services then the volume insensitive cost of the BNF is a cost common to the services (as defined in subsection (c)(5)(C) of this section) that use the BNF.

(5) When services share significant common costs (as defined in subsection (c)(5)(C) of this section), none of the common costs must be included in the LRIC studies for the services individually; instead, the company must identify which services share the common costs and attribute the cost recovery responsibility of these costs

to the group of services collectively. Specifically, the individual LRIC studies for residential and business basic local exchange service, as these services are tariffed on the effective date of this section, must exclude any volume insensitive costs associated with the use of the

network access channel basic level (as defined in subsection (e)(1)(A) of this section) and network access channel connection basic level (as defined in subsection (e)(2)(A) of this section).

(6) When two or more groups of services share common costs, none of the common costs must be included in the LRIC studies for groups individually; instead, the company must identify which groups share the common costs and assign the common cost recovery responsibility of these costs to these groups collectively.

(7) Nothing in this section is intended to either endorse or reject the DCTU's current rate and tariff structures.

(e) **Identification of basic network functions.** The DCTU must identify for each subcategory of BNFs the relevant and separately identifiable BNFs. The determination of the appropriate degree of aggregation of network components, functions, or activities into separately identifiable BNFs must be consistent with the principles described in subsection (d) of this section. Furthermore, in choosing BNFs, the DCTU must seek to minimize the number of network components, functions, or activities that are not included in BNFs. In addition to BNFs the company identifies under this subsection, the company must identify for each subcategory of BNFs the following prescribed BNFs:

(1) **Required BNFs for subcategory network access (NA) channel:**

(A) NA channel basic level: A transmission path which provides less than 1.544 MBPS digital capability. This includes 300 to 3,000 Hz analog voice service.

(B) NA channel DS-1 level**:** A transmission path which has 1.544 MBPS digital capability.

(C) NA channel DS-3 level: A transmission path which has 45 MBPS digital capability.

(2) **Required BNFs for subcategory NA Channel Connection:**

(A) NA channel connection basic level: An interface for channels which provide less than 1.544 MBPS digital capability. This includes the interface for 300 - 3,000 Hz analog voice service which is the basic interface for most voice grade services such as: basic local residential and local business service, PBX trunks, centrex-type access lines and voice grade dedicated transport service. In addition, this category includes the interface for four frequency bandwidths provided for audio channels such as: 200 to 3,500 Hz, 100 to 5,000 Hz, 50 to 8,000 Hz and 50 to 15,000 Hz. Also included in this BNF are the interfaces for low speed data transmission at speeds of 2.4, 4.8, 9.6, 56 KBPS and all other speeds below the T-1 rate of 1.544 MBPS. This interface is for narrowband service.

(B) NA channel connection DS-1 level: An interface for 1.544 MBPS digital transmission channels. This interface connects high capacity wideband transmission channels which operate in a full duplex, time division (digital) multiplexing mode.

(C) NA channel connection DS-3 level: An interface for 45 MBPS digital transmission channels. This interface connects broadband transmission channels which operate in full duplex, time division (digital) multiplexing mode.

(3) **Required BNFs for subcategory Channel Performance and Other Features and Functions:**

(A) Standard signaling and transmission level capabilities. Signaling and transmission level capabilities suitable for a wide variety of network services and applications associated with the BNF NA channel basic level, as defined in paragraph (1)(A) of this subsection.

(B) Nonstandard signaling and transmission level capabilities and other features. Signaling and transmission level capabilities and other features and functions, other than those defined in subparagraph (A) of this paragraph, such as high voltage protection, multiplexing, and bridging. The company is encouraged to disaggregate this BNF into smaller BNFs that capture the variety of features and functions available to customers.

(4) **Required BNFs for subcategory interoffice switching: interoffice switching.** The type of switching that provides for: switching between network access channels and switched transport facilities which are connected to different wire centers; and switching between network access channels and switched transport facilities when a tandem switch is used as the first point of interface to the switched network (e.g., connection of facilities from an interexchange carrier's point of network interface).

(5) **Required BNFs for subcategory intraoffice switching: intraoffice switching.** Switching between two or more network access channels served from the same wire center.

(6) **Required BNFs for subcategory switching features:**

(A) Hunting arrangements. An optional function available to customers with multiple local exchange access lines in service.

(B) Custom calling features. Various optional features which provide added calling convenience.

(C) Central office automatic call distribution. The provision of call distribution as an integrated function of certain electronic central offices equipped to provide this capability. This function permits an equal distribution of a large volume of incoming calls to predesignated groups of answering positions, referred to as agent positions.

(D) Central office based PBX-type functions. A business communications system furnished from stored program control central offices that provides the equivalent of customer premises PBX services through the use of central office hardware and software as well as through network access facilities from the central office to the customer premises. Included in this BNF must be only hardware specific to this type of service, processor or memory usage involved in special features for this type of service, and any software or software right to use fees associated with this type of service. This BNF should exclude any network functions that are already identified as other BNFs.

(7) **Required BNFs for subcategory dedicated transport:**

(A) Dedicated transport termination. An interface which provides for the transmission conversions (e.g., multiplexing) required between channel connection and dedicated transport facilities.

(B) Dedicated transport facility. The full period, bandwidth specific (e.g., DS-0, DS-1, and DS-3), interoffice transmission paths established between two points of dedicated transport termination.

(8) **Required BNFs for subcategory switched transport:**

(A) Switched transport termination. An interface which provides for the transmission conversion (e.g., multiplexing) required between the switching function and switched transport facilities.

(B) Switched transport facility. The temporary interoffice transmission paths established between two points of switched transport termination.

(C) Switched transport tandem switching. The intermediate points of switching used as an economic surrogate to direct routing of interoffice facilities in the provision of switched transport.

(9) **Required BNFs for subcategory billing and collection: billing and collection.** The function of compiling the information needed for customer billing, preparing the customer bill statement, disbursing the bill and collecting the customer payments (this includes any collection activities required for late payment or non-payment of billing amount due).

(10) **Required BNFs for subcategory measurement: measurement.** The function of assembling, collating and transmitting end office switch recorded call data (occurrence and duration).

(11) **Required BNFs for subcategory operator services: operator services.** The role of providing a number of live or mechanized assistance functions to aid customers in the following ways: obtaining customer telephone number, street address and ZIP code information (directory assistance); providing new telephone numbers or explanatory information to callers who dial numbers which have been changed or disconnected (intercepts); providing assistance to customers in completing operator handled toll or local calls (collect, credit card, third party, station-to-station or person-to-person); checking busy lines to make sure the line is not out of service (busy line verification); and interrupting busy lines (busy line interruption). These operator services are provided to end user customers as well as local exchange and interexchange carriers.

(f) **LRIC studies for individual BNFs.** The DCTU must perform a LRIC study for each of the BNFs identified under subsection (e) of this section. The company must perform the LRIC studies consistent with the principles described in subsection (d) of this section. Additionally, the company must use the following instructions in determining the LRIC for individual BNFs.

(1) **Relevant increment of output.** For the purposes of this subsection, the relevant increment of output, as that term is used in the definition of LRIC in §26.5 of this title (relating to Definitions), must be the level of output necessary to satisfy total current demand levels for all services using the BNF in question. Adjustments to total service output may be made to reflect the presence of new services for which

demand levels can demonstrably be anticipated to increase significantly over the course of six months.

(2) **Relating expenses to BNFs.** The company must avoid the use of embedded cost data and must **determine** expenses consistent with the principles of long run incremental costing.

(A) Common expenses. Common expenses that are not directly attributable, using the cost causation principle, to the BNF must be excluded.

(B) Nonrecurring expenses. The expenses of nonrecurring activities must be separately identified.

(C) Taxes. Any tax expenses not directly attributable, using the cost causation principle, must be excluded from the LRIC study for individual BNFs. Specifically, taxes associated with the provision of services that use more than one BNF must not be included in the BNF LRICs.

(3) **Least cost technology.** LRIC studies must assume the use of least cost technology. The choice of least cost technologies, however, must:

(A) be restricted to technologies that are currently available on the market and for which vendor prices can be obtained;

(B) be consistent with the level of output necessary to satisfy current demand levels for all services using the BNF in question; and

(C) be consistent with overall network design and topology requirements.

(4) **Network topology.** LRIC studies must use the existing or planned network topology.

(5) **Cost of money.** When the company uses the most recent commission approved rate of return for the company, determined either in a rate proceeding as described in §26.201(d)(1) of this title (relating to Cost of Service) or a commission arbitration proceeding, there will be a rebuttable presumption of its reasonableness. The company may use any other forward-looking rate, but must justify its use. The DCTU is not required to update its filing only to reflect the most recently approved cost of money.

(6) **Rate of depreciation.** When the company uses the most recent commission approved rate of depreciation for the company there will be a presumption of reasonableness. The company must justify the use of any other rate.

(7) **Measure of unit cost.** LRIC studies must identify the appropriate measure of unit cost for a BNF (e.g., minutes of use, access line). The measure of unit cost chosen for a BNF must correspond to the basis upon which the costs of the BNF are incurred. The measure of unit cost may be multidimensional; for example, it may have both time and distance components. In identifying the appropriate measure of unit cost, the company must ignore the current rate structure for tariffed services using the BNF.

(8) **Determination of unit cost.** Using the measure of unit cost identified under paragraph (7) of this subsection, the company must calculate unit cost for the BNF based on the assumption of full capacity utilization of the BNF, which should allow for any spare capacity due to lumpy investments or technical requirements, such as spare capacity needed for testing. The unit cost must be calculated based on the volume sensitive costs of the BNF and exclude all costs that are volume insensitive (as those terms are defined in §26.5 of this title).

(9) **Determination of volume insensitive costs.** The company must calculate the volume insensitive costs (as defined in §26.5 of this title) for the BNF.

(10) **Cost drivers.** LRIC studies must identify and account for all relevant cost drivers. LRIC studies for certain BNFs must at a minimum account for the cost drivers specified below.

(A) Cost drivers for NA channel basic level, NA channel DS-1 level, and NA channel DS-3 level. The LRICs for these BNFs must systematically account for variations in costs caused by variations in:
(i) the density of a wire center;
(ii) the size of a wire center; and
(iii) the distance.

(B) Cost drivers for NA connection basic level, NA connection DS-1 level, and NA connection DS-3 level. The LRICs for these BNFs must systematically account for variations in costs caused by variations in:
(i) the density of a wire center; and
(ii) the size of a wire center.

(C) Cost drivers for intraoffice switching and interoffice switching. The LRICs for these BNFs must systematically account for variations in costs caused by variations in:
(i) the density of a wire center;
(ii) the size of a wire center; and
(iii) the time of day.

(D) Cost drivers for dedicated transport facilities and termination. The LRICs for these BNFs must systematically account for variations in costs caused by variations in:
(i) the size of a wire center; and
(ii) the distance.

(E) Cost drivers for switched transport facilities, termination and tandem switching. The LRICs for these BNFs must systematically account for variations in costs caused by variations in:
(i) the size of a wire center;
(ii) the distance; and
(iii) time of day.

(F) Cost drivers for measurement. The LRIC for this BNF must systematically account for variations in costs caused by variations in:
(i) the density of a wire center;
(ii) the size of a wire center;
(iii) the time of day; and
(iv) the duration of a call.

(G) Cost drivers for operator services. The LRIC for this BNF must systematically account for variations in costs caused by variations in the type of operator services calls.

(g) **LRIC studies for tariffed services.** The DCTU must perform a LRIC study for each tariffed service, except those services for which a waiver has been granted under the workplan approved by the commission. Each LRIC study for a tariffed service must be calculated as the sum of the costs caused by that service's use of BNFs and any other service specific costs associated with functions not identified as separate BNFs, such as expenses

of billing, service specific advertising and marketing, and service specific taxes. Each LRIC study for a tariffed service must be consistent with the principles described in subsection (d) of this section. Additionally, the company must use the following instructions in determining the LRIC for individual tariffed services:

(1) **Mapping of BNFs and costs to tariffed services.** The LRIC study must identify the BNFs that are used in the provision of the tariffed service; the long run incremental costs for the tariffed service must include the costs associated with this usage. The costs associated with the service's use of a BNF must be calculated as the product of the unit cost for the BNF (as determined under subsection (f)(8) of this section) and the demand of the service for that BNF.

(2) **Identification of other costs.** The LRIC study for an individual tariffed service must include all service specific costs (e.g., expenses of billing, marketing, customer service or service specific taxes) related to the provision of the service that are not included in the costs for the BNFs.

(3) **Exclusion of common costs.** The LRIC study for an individual tariffed service must exclude any costs that are common costs (as defined in subsection (c)(5) of this section). Specifically, the individual LRIC studies for residential and business basic local exchange service, as these services are tariffed on the effective date of this section, must exclude any volume insensitive costs associated with the use of the network access channel basic level (as defined in subsection (e)(1)(A) of this section) and network access channel connection basic level (as defined in subsection (e)(2)(A) of this section).

(4) **Relevant increment of output.** For the purposes of this subsection, the relevant increment of output, as that term is used in the definition of LRIC in §26.5 of this title (relating to Definitions), must be the level of output necessary to satisfy current demand levels for the service. Adjustments to total service output may be made to reflect the presence of new services for which demand levels can demonstrably be anticipated to increase significantly over the course of six months.

(5) **Relating expenses to services.** The company must avoid the use of embedded cost data and must determine expenses consistent with the principles of long run incremental costing.

(A) Common expenses. Common expenses that are not directly attributable, using the cost causation principle, to the service must be excluded.

(B) Nonrecurring expenses. The expenses of nonrecurring activities must be separately identified.

(C) Taxes. Any tax expenses not directly attributable, using the cost causation principle, must be excluded from the LRIC study for individual services.

(6) **Least cost technology.** LRIC studies must assume the use of least cost technology. The choice of least cost technologies, however, must:

(A) be restricted to technologies that are currently available on the market and for which vendor prices can be obtained;

(B) be consistent with the level of output necessary to satisfy current demand levels for all services using the BNF in question; and

(C) be consistent with overall network design and topology requirements.

(7) **Network topology.** LRIC studies must use the existing or planned network topology.

(8) **Cost of money.** When the company uses the most recent commission approved rate of return for the company, determined either in a rate proceeding as described in §26.201(d)(1) of this title (relating to Cost of Service) or a commission arbitration proceeding, there will be a rebuttable presumption of its reasonableness. The company may use any other forward-looking rate, but must justify its use. The DCTU is not required to update its filing only to reflect the most recently approved cost of money.

(9) **Rate of depreciation.** When the company uses the most recent commission approved rate of depreciation for the company there will be a presumption of reasonableness. The company must justify the use of any other rate.

(h) **Identification of BNFs and groups of services that share significant common costs and calculation of such common costs.** The company must identify all instances in which BNFs and groups of services share significant common costs and calculate such common costs.

(1) **Costs common to BNFs.** The company must identify and calculate for each subcategory of BNFs and category of BNFs significant costs that are common to BNFs (as defined in subsection (c)(5)(B) of this section). Costs common to BNFs must only be identified and calculated at the level of subcategories of BNFs and/or categories of BNFs.

(2) **Costs common to groups of services.** The company must identify and calculate all significant common costs and the groups of services that share those common costs (as defined in subsection (c)(5)(C) of this section). The calculation of common costs required under paragraphs (1)-(2) of this subsection must be consistent with the principles described in subsection (d) of this section and the instructions listed below.

(3) **Relevant increment of output.** When common costs are computed for BNFs or services, the relevant increment of output, as that term is used in the definition of LRIC in §26.5 of this title (relating to Definitions), must be the level of output necessary to satisfy current demand levels for the BNFs or the services. Adjustments to total service output may be made to reflect the presence of new services for which demand levels can demonstrably be anticipated to increase significantly over the course of six months.

(4) **Expenses.** The company must avoid the use of embedded cost data and must determine expenses consistent with the principles of long run incremental costing.

(A) Nonrecurring expenses. The expenses of nonrecurring activities must be separately identified.

(B) Taxes. Any tax expenses not directly attributable, using the cost causation principle, must be excluded from the cost studies for common costs.

(5) **Least cost technology.** The studies must assume the use of least cost technology. The choice of least cost technologies, however, must:

(A) be restricted to technologies that are currently available on the market and for which vendor prices can be obtained;

(B) be consistent with the level of output necessary to satisfy current demand levels for the BNFs or services in question; and

(C) be consistent with overall network design and topology requirements.

(6) **Network topology.** Cost studies must use the existing or planned network topology.

(7) **Cost of money.** When the company uses the most recent commission approved rate of return for the company, determined either in a rate proceeding as described in §26.201(d)(1) of this title (relating to Cost of Service) or a commission arbitration proceeding, there will be a rebuttable presumption of its reasonableness. The company may use any other forward-looking rate, but must justify its use. The DCTU is not required to update its filing only to reflect the most recently approved cost of money.

(8) **Rate of depreciation.** When the company uses the most recent commission approved rate of depreciation for the company there will be a presumption of reasonableness. The company must justify the use of any other rate.

(i) **LRIC studies for groups of tariffed services that share significant common costs.** The DCTU must perform a LRIC study for each group of services identified under subsection (h)(2) of this section. Each group LRIC must be calculated as the sum of the LRICs (as determined under subsection (g) of this section) for the services in the group and the common costs for those services (as identified under subsection (h)(2) of this section). Each LRIC study must be consistent with the principles described in subsection (d) of this section. Additionally, the company must use the following instructions in determining the LRIC for groups of services.

(1) **Relevant increment of output.** When the LRIC is computed for a group of services, the relevant increment of output, as that term is used in the definition of LRIC in §26.5 of this title (relating to Definitions), must be the level of output necessary to satisfy current demand levels for the services in the group. Adjustments to total service output may be made to reflect the presence of new services for which demand levels can demonstrably be anticipated to increase significantly over the course of six months.

(2) **Relating expenses to groups of services.** The company must avoid the use of embedded cost data and must determine expenses consistent with the principles of long run incremental costing.

(A) Common expenses. Common expenses that are not directly attributable, using the cost causation principle, to the group of services must be excluded.

(B) Nonrecurring expenses. The expenses of nonrecurring activities must be separately identified.

(C) Taxes. Any tax expenses not directly attributable, using the cost causation principle, must be excluded from the LRIC study for the group of services.

(3) **Least cost technology.** LRIC studies must assume the use of least cost technology. The choice of least cost technologies, however, must:

(A) be restricted to technologies that are currently available on the market and for which vendor prices can be obtained;

(B) be consistent with the level of output necessary to satisfy current demand levels for all services using the BNF in question; and

(C) be consistent with overall network design and topology requirements.

(4) **Network topology.** LRIC studies must use the existing or planned network topology.

(5) **Cost of money.** When the company uses the most recent commission approved rate of return for the company, determined either in a rate proceeding as described in §26.201(d)(1) of this title (relating to Cost of Service) or a commission arbitration proceeding, there will be a rebuttable presumption of its reasonableness. The company may use any other forward-looking rate, but must justify its use. The DCTU is not required to update its filing only to reflect the most recently approved cost of money.

(6) **Rate of depreciation.** When the company uses the most recent commission approved rate of depreciation for the company there will be a presumption of reasonableness. The company must justify the use of any other rate.

(j) **Requirements for subsequent filings of LRIC studies.** The LRIC studies required by this subsection must be consistent with the principles, instructions and requirements set forth in this section and the workplan approved by the commission and must be reviewed in accordance with the procedures established in subsection (k) of this section.

(1) **Updated studies.** A DCTU may be required to update the filings required by this section, other than the workplan, for those studies where significant changes have occurred.

(2) **Provisions for new BNFs.** When significant technological or other changes occur that necessitate a change in the definition of current BNFs or the identification of new BNFs, the DCTU must file with the commission and the Office of Public Utility Counsel (OPUC) updated versions for all affected LRIC studies or new studies as appropriate.

(3) **Provisions for new services.** For each application for a service filed in accordance with this title, the DCTU must file with the commission and OPUC a LRIC study for the service consistent with the principles described in subsection (d) of this section and the specific requirements set forth in subsection (g) of this section.

(4) **Unbundling of existing tariffed services.** When an application filed in accordance with this title proposes a service that previously had been bundled with other BNFs into a tariffed service, the DCTU must carefully reexamine the identification of groups of services that share significant common costs (as required under subsection (h) of this section). If the new service significantly changes the identification of groups of services and the identification of common costs, the DCTU should update all studies required under this section that are affected by these changes.

(k) **Review process for LRIC studies.** A LRIC study considered under this section will be reviewed administratively to determine whether the DCTU's LRIC study is consistent with the principles, instructions and requirements set forth in this section.

(1) **Sufficiency.** The LRIC study will be examined for sufficiency. To be sufficient, the LRIC study must conform to the prototype studies developed under the workplan approved by the commission. If the presiding officer or the commission staff concludes that material deficiencies exist in the LRIC study, the DCTU will be notified within 15 days of the filing date of the specific deficiency in its LRIC study. The DCTU will have 15 days from the date it is notified of the deficiency to file a corrected LRIC study.

(2) **Time schedule.**

(A) No later than 45 days after the filing date of the sufficient LRIC study, any party that demonstrates a justiciable interest may file with the presiding officer written comments or recommendations concerning the LRIC study.

(B) No later than 55 days after the filing date of the sufficient LRIC study, OPUC may file with the presiding officer written comments or recommendations concerning the LRIC study.

(C) No later than 65 days after the filing date of the sufficient LRIC study, commission staff must file with the presiding officer written comments or recommendations concerning the LRIC study.

(D) No later than 75 days after the filing date of the sufficient LRIC study, any party that demonstrates a justiciable interest, OPUC, or the DCTU may file with the presiding officer a written response to the commission staff's recommendation.

(E) No later than 85 days after the filing date of the sufficient LRIC study, the presiding officer must complete an administrative review to determine whether the DCTU's LRIC study is consistent with the principles, instructions and requirements set forth in this section. The presiding officer must approve the LRIC study or order the DCTU to refile the LRIC study incorporating all modifications recommended by the presiding officer.

(F) Any party may appeal to the commission an administrative determination by a presiding officer within five days after the date of notification of the determination. The commission will rule on the appeal within 30 days after the date it receives the appeal. If the commission or a presiding officer orders a cost study to be changed, the dominant certificated telecommunications utility must be ordered to make those changes within a period that is commensurate with the complexity of the LRIC study.

(3) **Requests for information.** While the LRIC study is being administratively reviewed, the commission staff, OPUC, and any party that demonstrates a justiciable interest may submit requests for information to the DCTU. Answers to such requests for information must be provided within ten days after receipt of the request by the DCTU to commission staff, OPUC and any party that demonstrates a justiciable interest.

(4) **Suspension.** At any point within the first 45 days of the review process, the presiding officer, the commission staff, OPUC, the DCTU, or any party that demonstrates a justiciable interest may request that the review process be suspended for 30 days. The presiding officer may grant a request for suspension only if he or she has determined that the party has demonstrated that good cause exists for such suspension.

(5) **Effective date of the LRIC study.** The effective date of the LRIC study must be the date it is approved by the presiding officer.

(l) **Notice requirements.** At least ten days before a DCTU files any workplan or LRIC study in accordance with this section, the DCTU must file with the commission and OPUC a notice of its intent to file such workplan or LRIC study and the expected filing date. The DCTU's notice must indicate that the filing is being made in accordance with this section.

The commission must then publish notice of the DCTU's intent to file the workplan or LRIC study in the Texas Register.

§26.217. Administration of Extended Area Service (EAS) Requests.

(a) **Purpose.** This section establishes procedures for processing requests for extended area service (EAS) in accordance with Public Utility Regulatory Act (PURA), Chapter 55, Subchapter B. On or after September 1, 2011, the commission will not require a telecommunications provider to provide mandatory or optional extended area service to additional metropolitan areas or calling areas.

(b) **Extended Area Service.** The term "utility" in this section refers to a dominant certificated telecommunications utility.

(1) **Filing requirements.**

(A) In order to be considered by the commission, a request for EAS must be initiated by at least one of the following actions:

(i) a petition signed by the greater of 5.0% or 100 of the subscribers in the exchange from which the petition originates;

(ii) a resolution adopted and filed with the commission by the governing body of a political subdivision provided that said governing body properly represents the exchange requesting EAS;

(iii) a resolution adopted and filed with the commission by the board of directors or trustees of a community association representing an unincorporated community; or

(iv) an application filed by one or more of each affected utility.

(B) A request for establishment of a particular EAS arrangement in accordance with subparagraph (A)(i), (ii), or (iii) of this paragraph must not be considered sooner than three years after either a determination of the failure of a previous request to meet eligibility requirements, or final commission action on a previously docketed request. An exception to this requirement may be granted to any petitioning exchange which demonstrates that a change of circumstances may have materially affected traffic levels between the petitioning exchange and the exchange to which EAS is desired.

(C) A request for EAS must state the name of each exchange to which EAS is sought.

(D) The petition must set forth the name and telephone number of each signatory and the name of the exchange from which the subscribers receive service.

(E) Each signature page of a petition for EAS must contain information which clearly states that establishment of the requested EAS route may require that subscribers to the service change their telephone numbers and pay a monthly EAS rate in addition to their local exchange service rates, as well as applicable service connection charges.

(F) Requests for EAS into metropolitan exchanges will be grouped by relevant metropolitan exchange. For each metropolitan exchange, commission staff will file a motion to docket a proceeding for the determination of uniform EAS rate additives as directed by paragraphs (3), (4), and (5) of this

subsection for all pending EAS requests to that metropolitan exchange. Upon the docketing of such a proceeding, the petitioned utility must publish notice in a newspaper of general circulation in the metropolitan area for two consecutive calendar weeks. The notice must contain such information as deemed reasonable by the presiding officer in the proceeding. The demand studies required by paragraph (3) of this subsection must be initiated no earlier than 60 days from the date of final publication of notice. New petitions for EAS into the metropolitan exchange may be accepted prior to the initiation of the demand studies.

(2) **Community of interest.**

(A) Upon receipt of a proper filing under the provisions set out in paragraph (1) of this subsection, the utility involved will be directed by the commission staff to initiate appropriate calling usage studies. Within 90 days of receipt of such direction, the utility must provide the results of such studies to the commission staff and to a representative of each petitioning exchange. The message distribution and revenue distribution detail from the studies must be considered proprietary unless the parties agree otherwise and must not be released for use outside the context of the commission's proceedings. The data to be provided must be based upon a minimum 60 day study of representative calling patterns, must be in such form, detail, and content as the commission staff may reasonably require and must include at least the following information:

(i) for business customers and residential customers and for the combined total, the number of messages and either minutes-of-use or billed toll revenues per customer account per month, in each direction over the route being studied;

(ii) a detailed analysis of the distribution of calling usage among subscribers, in each direction over the route being studied, showing the number of subscriber accounts placing zero calls, one call, etc., through ten calls, the number of subscriber accounts placing between 11 and 20 calls, the number placing between 21 and 50 calls, and the number of subscriber accounts placing more than 50 calls, per month;

(iii) data showing, by class of service, the number of subscriber accounts in service for each of the exchanges being studied;

(iv) the distance between rate centers, and the average revenue per message for the calls during the study period;

(v) the number of foreign exchange (FX) lines in service over each route and the estimated average calling volumes on these lines expressed as messages per month;

(vi) a listing of known interexchange carriers providing service between the petitioning exchange and each exchange to which EAS is desired.

(B) A community of interest between exchanges must be considered to exist from one exchange to the other when:

(i) there is an average of no less than ten calls per subscriber account per month from one exchange to the other, and

(ii) no less than two thirds of the subscribers' accounts place at least five calls per month from one exchange to the other.

(C) A request for EAS must be assigned a project number and notice must be provided, in accordance with paragraph (7) of this subsection, when a community of interest is found to exist as described in subparagraph (B) of this paragraph:

(i) on a bilateral basis between exchanges, or

(ii) on a unilateral basis from the petitioning exchange to the other exchange.

(D) The project must be established as a formal docket upon the motion of the commission staff.

(E) Following the docketing of a request, a prehearing conference must be scheduled to establish each exchange to which EAS is sought, and to report any agreements reached by the parties. The utility involved must conduct appropriate demand and costing analyses according to paragraphs (3) and (4) of this subsection.

(3) **Demand analysis.**

(A) The utility involved must conduct analyses of anticipated demand for the requested EAS. The data must be in such form, detail, and content as the commission staff may reasonably require and must include, at a minimum, the following information:

(i) the number of subscribers who are expected to take the requested service at the estimated rates recommended in accordance with paragraph (5) of this subsection and the associated probability of that level of subscribership;

(ii) how call traffic within the requested extended area is expected to change given the rates and subscribership under clause (i) of this subparagraph; and

(iii) the total volume of traffic upon which to base the anticipated switching and trunking requirements resulting from clauses (i) and (ii) of this subparagraph.

(B) Unless the utility demonstrates good cause to expand the time schedule, the utility must provide to the commission staff and to other parties to the proceeding, no later than 120 days after the prehearing conference, the results of these analyses, together with supporting schedules and detailed documentation needed to understand and verify the study results.

(4) **Determination of costs.**

(A) The utility involved must conduct studies necessary to determine the changes in costs and revenues which may reasonably be expected to result from establishment of the requested EAS. These studies must consider and develop the long run incremental costs as follows:

(i) switching and trunking costs associated with existing toll traffic which converts to EAS traffic plus the costs of switching and

trunking required to handle the additional traffic as determined in paragraph (3)(A)(ii) of this subsection;

(ii) the increases and decreases in expenses resulting from the new service and the net effect on operating expenses; and

(iii) direct costs incurred by the utility(ies) in conducting demand analyses in compliance with paragraph (3) of this subsection.

(B) The utility(ies) may analyze the effect on toll revenues in order to present evidence on the overall revenue effects of providing the requested EAS. Revenue effects supported by such evidence, if presented, may be included in the EAS rate additives specified in paragraph (5)(D) of this subsection.

(C) The utility must file with the commission's the proceeding the results of these studies, together with supporting schedules and detailed documentation needed to understand and verify the study results according to the following schedule, unless the utility can demonstrate that good cause exists to expand the time schedule for a particular study:

(i) incremental costs identified in this paragraph must be filed no later than 90 days from the filing of the results of the demand analysis conducted in accordance with paragraph (3) of this subsection; and

(ii) toll revenue effects, if analyzed in accordance with subparagraph (B) of this paragraph, must be filed no later than 90 days from the filing of the results of the incremental costs, in accordance with clause (i) of this subparagraph.

(5) **EAS rate additives.**

(A) Coincident with the filing of cost study results, or coincident with the toll revenue effect results, if filed, the utility must file recommendations for proposed incremental rate additives, by class of service, necessary to support the cost of the added service, as well as to support the toll revenue effect, if such effect is filed.

(i) EAS rate additives to be assessed on EAS subscribers in each petitioning exchange are to recover the incremental cost of providing the service according to paragraph (4)(A) of this subsection plus 10% of the incremental cost.

(ii) The rate additives to be assessed on subscribers in the metropolitan exchange for which EAS has been requested are to recover revenues determined by the following formula: net lost toll multiplied by percent outbound toll, and multiplied by the estimated EAS take rate. The terms in the formula are defined as follows:

(I) net lost toll - lost toll revenue calculated according to paragraph (4)(B) of this subsection less the revenue recovered through the EAS rate additive identified in clause (i) of this subparagraph;

(II) percent outbound toll - this factor is calculated by dividing toll minutes of use originating in the metropolitan exchange and terminating in the petitioning exchanges by the total number of toll minutes of use between the metropolitan exchange and each petitioning exchange; and

(III) estimated EAS take rate - the estimated number of EAS subscribers in the petitioning exchanges divided by the total number of subscribers in each petitioning exchange.

(B) Service connection charges will be applicable.

(C) A non-recurring charge to defray the direct incremental costs of the demand analyses identified in paragraph (4)(A)(iii) of this subsection must be charged to subscribers who order the service within 12 months from the time it is first offered. The non-recurring charge must not exceed $5.00 per access line.

(D) The EAS rate additive to be used in each affected exchange must meet the following standards.

(i) No increase in rates must be incurred by the subscribers of non-benefiting exchanges, that is, by subscribers whose calling scopes are not affected by the requested EAS service.

(ii) If the petitioning exchange demonstrated a unilateral but not a bilateral community of interest through the requirements of paragraph (2)(C)(ii) of this subsection, the EAS arrangements must be priced using those rate increments designed to recover the added costs for each route, plus the toll revenue effect, if reasonably substantiated. The total increment chargeable to subscribers within an exchange must be the sum of the increments of all new EAS routes established for that exchange.

(iii) If the petitioning exchange demonstrated a bilateral community of interest through the requirements of paragraph (2)(C)(i) of this subsection and requested that the costs be borne on a bilateral basis, the additional cost for the new EAS route must be divided between the two participating exchanges according to the ratio of calling volumes between the two exchanges.

(iv) In establishing a flat rate EAS increment, all classes of customer access line rates within each exchange must be increased by equal percentages.

(6) **Subscription threshold.**

(A) A threshold demand level must be established by the commission's order in the docketed proceeding prior to the design or construction of facilities for the service. A reasonable pre-subscription process must then be undertaken to determine the likely demand level. If the likely demand level equals or exceeds the threshold demand level, then EAS must be provided in accordance with the commission's order. If the threshold demand level is not met, the affected utility is not required to provide the EAS approved by the commission.

(B) The cost of pre-subscription must be divided between the utility and the petitioners. The petitioners must pay for the printing of bill inserts and ballots and the utility must insert them in bills free of charge. In the alternative, upon the agreement of the parties, the utility must provide, free of charge, and under protective order, the mailing labels of the subscribers

in the petitioning exchange, and the petitioners must pay the cost of printing and mailing the bill inserts and ballots.

(7) **Notice.**

(A) Notice of the filing of an EAS application must be provided to all subscribers within each petitioning exchange, by publication for two consecutive weeks in a newspaper of general circulation in the area. Notice must also be given to individual subscribers either through inserts in customer bills, or through a separate mailing to each subscriber. The notice must state: the project number, the nature of the request, and the commission's mailing address and telephone number to contact in the event an individual wishes to protest or intervene. The commission must also publish notice in the *Texas Register*.

(B) Written notice containing the information described above must be provided to each governing official of all incorporated areas within the affected exchanges and each county commission, or each board of directors or trustees of a community association representing any unincorporated areas within the affected exchanges.

(C) The cost of notice must be borne by the petitioners.

(8) **Joint filings.**

(A) EAS agreements. The commission may approve agreements for EAS or EAS substitute services filed jointly by the representatives of petitioning exchanges and the affected utility so long as the agreements are in accordance with subparagraph (C)(i)-(x) of this paragraph. Notwithstanding any other provisions of this paragraph, if more than one political subdivision is affected by a proposed optional calling plan under PURA §55.023, the agreement of each political subdivision is not required.

(B) Multiple exchange common calling plans. Joint filing agreements for EAS or EAS substitute services among three or more exchanges must be permitted in accordance with subparagraph (C)(i)-(x) of this paragraph.

(C) Standards for joint filings. Joint filings must be permitted subject to the following:

(i) The parties to joint filings must include the name of each utility which provides service in the affected exchanges and one duly appointed representative for each affected exchange. Each exchange representative must be designated jointly by the governing officials of all incorporated areas within the affected exchange and each county commission representing any unincorporated areas within the affected exchange.

(ii) Joint filings are exempt from the traffic requirements contained in paragraph (2) of this subsection.

(iii) Joint filings may include rate proposals which are flat rate, usage sensitive, block rates, or other pricing mechanisms. If usage-sensitive rates are proposed, joint applicants must include the commission staff in their negotiations.

(iv) Joint filings may propose either one-way or two-way calling.

(v) Joint filings may propose either optional or non-optional calling.

(vi) Joint filings must specify all non-recurring and recurring rate additives to be paid by the various classes and grades of service in the affected exchanges.

(vii) Joint filings must demonstrate that the proposed rate additives:

(I) are in the public interest, and in the case of non-optional joint filings which include flat rate additives, the filing must demonstrate that more than 50% of the total subscribers who will experience a rate change are in favor of this joint filing at the proposed rates; and

(II) recover, for the utility providing the service, the appropriate cost of providing EAS including a contribution to joint costs.

(viii) The notice requirements of paragraph (7) of this subsection are applicable to joint filings. In addition, the commission must publish notice of the proposed joint filing in the *Texas Register* and must provide notice to the Office of Public Utility Counsel upon receipt of the joint filing.

(ix) If intervenor status is not granted within 60 days of completion of notice, the joint filing must be handled administratively, with the commission determining whether the service meets the criteria listed in clause (vii) of this subparagraph. If requested by an intervenor or the commission staff, the joint filing must be docketed for hearing and final order. Any of the parties to the joint filing may withdraw the joint filing without prejudice at any time prior to the rendition of the final order. Any alteration or modification of the joint filing by the commission may only be made upon the agreement of all parties to the proceeding.

(x) The exchanges to be included within the proposed common calling plan area must be contained within a continuous boundary and all exchanges within that boundary must be included in the common calling plan.

§26.221. Applications to Establish or Increase Expanded Local Calling Service Surcharges.

(a) **Purpose.** The purpose of this section is to provide the standard for review of an incumbent local exchange company (ILEC) application, filed in accordance with the Public Utility Regulatory Act (PURA) §55.048(c), to recover all costs incurred and all loss of revenue from an expansion of a toll-free local calling area.

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

(1) **Avoided costs** — ILEC costs that are reduced or eliminated due to implementation of ELCS.

(2) **Costs incurred** — The amount of recurring and non-recurring costs incurred by an ILEC to implement ELCS, minus avoided costs.

(3) **Expanded local calling service (ELCS)** — A two-way toll-free local calling service provided by an ILEC to telephone service subscribers in accordance with §26.219 of this title (relating to Administration of Expanded Local Calling Service Requests).

(4) **Expanded local calling service (ELCS) fee** — A fee billed by an ILEC, in accordance with PURA §55.048(b), to subscribers in a petitioning telephone exchange.

(5) **Expanded local calling service (ELCS) requirement** — The sum of lost revenue and costs incurred due to implementation of ELCS.

(6) **Expanded local calling service (ELCS) surcharge** — A fee billed by an ILEC, in accordance with PURA §55.048(c), to each Texas subscriber of the ILEC, unless an exception is granted by the commission. ELCS surcharges are designed to recover the residual in paragraph (8) of this subsection.

(7) **Lost revenue** — The loss of revenue an ILEC realizes due to implementation of ELCS.

(8) **Residual** — The sum of lost revenue and costs incurred, minus revenue collected from ELCS fees.

(c) **General Principles**. The commission will consider these general principles when establishing or increasing ELCS surcharges.

(1) The commission may, at any time, initiate a show cause investigation or a compliance investigation of ELCS surcharges in accordance with Procedural Rule §22.241 of this title (relating to Investigations) to determine whether ELCS surcharges comply with the requirements in PURA §55.048.

(2) An ILEC bears the burden of demonstrating that a proposed ELCS surcharge:

(A) recovers lost revenue and costs incurred,

(B) recovers costs necessary only for implementation of ELCS and

(C) is just and reasonable.

(3) If an ILEC departs from the requirements in subsection (e)(1)-(6) of this section, and proposes instead to use statistical sampling or another method of calculating ELCS surcharges, the ILEC bears the burden of demonstrating the reasonableness of the alternative method as it relates to the surcharge at issue.

(4) An application to establish an ELCS surcharge must contain information that enables commission staff to validate and replicate the method used by the ILEC to develop a proposed ELCS surcharge.

(5) When established, ELCS surcharges must be based upon the most current count of local exchange access lines billed by an ILEC.

(6) The commission will pursue the goal of revenue neutrality in designing ELCS surcharges.

(7) Except as provided under subsection (i)(1) of this section, an ILEC has no continuing right to bill an ELCS surcharge for an indefinite period.

(8) ELCS surcharges must be designed so that business subscribers are billed twice the monthly per line charge billed to residential subscribers.

(d) **Confidentiality**. Before filing an application regarding an ELCS surcharge, an ILEC must obtain agreement from commission staff on a method for securing the confidentiality of information the ILEC deems confidential. An application filed in accordance with subsection (e) of this section must not exclude information deemed confidential by the ILEC.

(e) **Filing an application**. An application to establish or increase an ELCS surcharge must be assigned a control number and a presiding officer must be assigned to the project. An ILEC's application must be reviewed administratively unless the presiding officer dockets the project. An application must, at a minimum, include:

(1) twelve consecutive months of actual toll revenue data collected as near the ELCS implementation date as is practicable but no earlier than 18 months before the ELCS implementation date. Data provided by an ILEC must show actual toll revenue billed by the ILEC for each direction of each pre-ELCS toll route for each of the 12 consecutive months collected;

(2) twelve consecutive months of actual access revenue data collected as near the ELCS implementation date as is practicable but no earlier than 18 months before the ELCS implementation date. Data provided by an ILEC must show access revenue billed by the ILEC for each direction of each pre-ELCS access route for each of the 12 consecutive months collected;

(3) a calculation of the effect of any mechanism for pooling or settling revenue collected from and disbursed to telecommunications providers;

(4) copies of documents, such as invoices, work orders, receipts and lease agreements, that demonstrate the costs incurred by an ILEC to implement ELCS, with recurring costs and non-recurring costs separately identified for each pre-ELCS toll route;

(5) workpapers supporting all documents contained in the application, including but not limited to, the ILEC's development of factors, ratios, allocations, estimates, projections, averages and labor rates;

(6) a calculation of avoided costs;

(7) one or more tariff sheets reflecting the proposed rates;

(8) a request for exemption, if any, from one or more requirements in this subsection;

(9) a copy of the confidentiality agreement, if such an agreement is necessary, signed by a representative of commission staff;

(10) the text of the proposed notice of an application to establish or increase ELCS surcharges; and

(11) the ILEC's preferred duration of applicability of the proposed ELCS surcharges among alternatives listed in subsection (i) of this section.

(f) Administrative response to an application.

(1) **Notice.** The presiding officer will approve or modify the notice proposed under subsection (e)(10) of this section within 20 days after the filing of an application to establish or increase ELCS surcharges. The ILEC must arrange for publication of notice at least once each week for four consecutive weeks, in newspapers having general circulation in each of the ILEC's affected telephone exchanges. Published notice must identify the assigned control number, must include the language provided by §22.51(a)(1)(F) of this title (relating to Notice for Public Utility Regulatory Act, Chapter 36, Subchapters C-E; Chapter 51, §51.009; and Chapter 53, Subchapters C-E, Proceedings) modified to reflect the appropriate intervention deadline, must describe the application and must be written in plain English and Spanish. Notice must be published within 40 days of the date the presiding officer files an order approving the notice format. The ILEC must file an affidavit of completion of published notice within ten days following such completion. The presiding officer will cause notice to be published in the *Texas Register* within 30 days of the date an order of approval of the notice format is filed. Additionally, the ILEC must provide a copy of its application to the Office of Public Utility Counsel on the same day the application is filed with the commission.

(2) **Intervention.** The intervention deadline must be no sooner than ten days after the last date notice is published. On or before the intervention deadline, any interested person may file a request to intervene in the project. The presiding officer will rule on a request to intervene, in accordance with §22.103 of this title (relating to Standing to Intervene) within ten days from the date the request for intervention is filed with the commission. Intervention by an interested person does not by itself require that the project be docketed.

(3) **Discovery.** Discovery may commence on the date the application is filed in accordance with Chapter 22, Subchapter H of this title (relating to Discovery Procedures).

(4) **Interim surcharges.** No later than 30 days after the intervention deadline, the presiding officer will grant or deny, in whole or in part, a request for interim relief and may approve or modify a proposed interim ELC surcharge in accordance with §22.125 of this title (relating to Interim Relief).

(5) **Sufficiency review and requests for exemption**. Within 30 days after the filing of an ILEC application, commission staff must file comments on the sufficiency of the application and on any request for exemption filed by the ILEC under subsection (e)(8) of this section. No later than 30 days after commission staff's comments are filed, the ILEC must file a response and may amend or supplement its application. No later than ten days after the ILEC's response is filed, commission staff must file a recommendation to the presiding officer addressing whether the application is sufficient and whether any requests for exemption should be granted.

(6) **Docketing.** If commission staff or any intervenor files, within 30 days after the intervention deadline, a request to docket the project, the presiding officer will docket the project. Upon docketing, the presiding officer will ascertain whether the parties prefer to pursue settlement negotiations or alternative dispute resolution. If so, the presiding officer will abate the docket for a reasonable period. If the parties prefer to establish a procedural schedule, the presiding officer may refer the docket to the State Office of Administrative Hearings or may take other appropriate action. If neither commission staff nor an intervenor requests docketing, the presiding officer must administratively approve or modify the application within 40 days after the intervention deadline.

(g) **Calculation of initial ELCS surcharges**. An initial ELCS surcharge must be calculated using the formula described in this subsection unless the presiding officer, for good cause, modifies the formula.

(1) **Numerator.** First, sum the lost revenues and costs incurred to determine the ILEC's annual ELCS requirement. Second, use the most current count of access lines to calculate the amount of ELCS fee revenue received annually by the ILEC. Subtract the annual ELCS fee revenue from the annual ELCS requirement. The result is the annual residual. Third, divide the annual residual by 12 to obtain the monthly residual, the numerator.

(2) **Denominator.** First, obtain the most current count of residential and business lines served by the ILEC in Texas. Second, multiply the number of business lines by two. Third, add the doubled business lines to the number of residential lines. This total is the denominator.

(3) **ELCS surcharge formula**. Divide the numerator in paragraph (1) of this subsection by the denominator in paragraph (2) of this subsection to obtain the monthly ELCS surcharge per residential line. Multiply the monthly ELCS surcharge per residential line by two to obtain the monthly ELCS surcharge per business line. Round ELCS surcharges up or down to the nearest penny.

(h) **Adjustments to ELCS surcharges**. ELCS surcharges must be adjusted using the formula described in subsection (g) of this section, except that:

(1) the numerator established in a previous application may be modified to consider new information relevant to development of the residual:

(A) for any ELCS surcharge approved before February 1, 2000, if the commission reserved the right to subsequently review the costs incurred and lost revenues associated with the ELCS surcharge; or

(B) for any ELCS surcharge approved after February 1, 2000; and

(2) the denominator must be modified to reflect the most current count of local exchange access lines at the time of the adjustment. For ELCS surcharges approved before February 1, 2000, if the number of access lines in the denominator initially included only non-petitioning exchanges, an adjustment in the number of access lines must include only non-petitioning exchanges.

(i) **Duration**. An ILEC must select a preferred duration of applicability of its proposed ELCS surcharges from alternatives listed in this subsection. The commission may establish ELCS surcharges for any duration.

(1) **Permanent**. An ILEC may initiate a review of its rates and charges by filing a rate filing package. Following a review of the ILEC's cost of service in accordance with§26.201 of this title (relating to Cost of Service), any resulting ELCS surcharge must be considered permanent unless modified, for good cause, by the commission.

(2) **Phase-down**. If an ILEC's application to establish or increase an ELCS surcharge contains all information required in subsection (e)(1)-(6) of this section, the ILEC may propose a phase-down of its ELCS surcharge for a duration of five years. The phase-down must be implemented by reducing each ELCS surcharge by 20% at the end of each year of the phase-down period. At the end of the five-year phase-down period, the ELCS surcharge must be zero. A tariff sheet filed by the ILEC must contain ELCS surcharges for each of the five years of the phase-down period.

(3) **Phase-out**. An ILEC that files an application to establish or increase an ELCS surcharge may propose a phase-out of its ELCS surcharge. A proposed phase-out must be for a duration not to exceed two years. At the end of the phase-out period, the ELCS surcharge must be zero. A tariff sheet filed by the ILEC must contain ELCS surcharges for the two-year period and must state the two-year duration of applicability of the ELCS surcharges.

§26.224. Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies.

(a) **Application**. This section applies to any electing company, as the term is defined in the Public Utility Regulatory Act (PURA) §58.002. Other sections applicable to an electing company, include, but are not limited to, §26.225 of this title (relating to Requirements Applicable to Nonbasic Services for Chapter 58 Electing Companies), §26.226 of this title (relating to Requirements Applicable to Pricing Flexibility for Chapter 58 Electing Companies), and §26.227 of this title (relating to Procedures Applicable to Nonbasic Services and Pricing Flexibility for Basic and Nonbasic Services for Chapter 58 Electing Companies).

(b) **Purpose**. The purpose of this section is to establish requirements and procedures relating to the provision of basic network services.

(c) **Basic network services.**

(1) **Services included in basic network services.** Unless reclassified under PURA §58.024, the following are classified as basic network services under PURA §58.051(a):

(A) Flat rate residential local exchange telephone service, including primary directory listings and the receipt of a directory and any applicable mileage or zone charges;
(B) Residential tone dialing service;
(C) Lifeline service;
(D) Service connection for basic residential services;
(E) Direct inward dialing service for basic residential services;
(F) Private pay telephone access service;
(G) Call trap and trace service;
(H) 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;
(I) Mandatory residential extended area service arrangements;
(J) Mandatory residential extended metropolitan service or other mandatory residential toll-free calling arrangements; and
(K) Residential caller identification services if the customer to whom the service is billed is at least 65 years of age.

(2) **Separate tariff requirement.** Consistent with PURA §58.051(b), a basic network service offered by an electing company to a customer as a component of a package or other pricing flexibility offering must also be offered by the electing company as a separately tariffed service.

(3) **Basic network service rates capped.** The rates for basic network services for an electing company may not increase before September 1, 2005, except as provided for in subsection (f) of this section relating to rate increases prior to the rate cap expiration.

(4) **Basic network service rates charged.** The rates an electing company may charge during the period in which rates are capped are the rates charged by the company

on June 1, 1995, or, for a company that elects after September 1, 1999, the rates charged on the date of its election.

(5) **Pricing flexibility.** An electing company may offer pricing flexibility for basic network services in accordance with the requirements of §26.226 of this title.

(6) At the election of the affected incumbent local exchange company, the price for basic network service must also include the fees and charges for any mandatory extended area service arrangements, mandatory expanded toll-free calling plans, and any other service included in the definition of basic network service.

(7) A nonpermanent expanded toll-free local calling service surcharge established by the commission to recover the costs of mandatory expanded toll-free local calling service:

(A) is considered a part of basic network service;

(B) may not be aggregated under subsection (c)(6) of this section; and

(C) continues to be transitioned in accordance with commission orders and substantive rules.

(d) **Requirement for changes to terms of a tariff offering.** Prior to being offered, a change in the terms of a basic network service tariff offering, such as rate increases and decreases of a basic network service, must receive commission approval. Section 26.207 of this title (relating to Form and Filing of Tariffs) and §26.208 of this title (relating to General Tariff Procedures) must apply to tariffs offering a basic network service.

(e) **Establishment of a long run incremental cost floor.** For purposes of this section, long run incremental cost (LRIC) must be consistent with §26.215 of this title (relating to Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility (DCTU) Services). Establishment of a LRIC floor requires commission approval of a cost study prepared by an electing company in accordance with the standards in §26.214 of this title (relating to Long Run Incremental Cost (LRIC) Methodology for Services provided by Certain Incumbent Local Exchange Companies (ILECs) or §26.215 of this title, as applicable. After commission approval of a LRIC floor for a particular service, an electing company may change the rates of that service in accordance with the procedures in this section. The procedures in subsection (i) of this section, relating to rate decreases for basic network services, may not be available to an electing company for a service that does not have a LRIC floor.

(f) **Rate increase prior to rate cap expiration.** For a four-year period following Chapter 58 election or until September 1, 2005, whichever occurs later, an increase in the rate for a basic network service is permitted only after commission approval and only within the following parameters:

(1) A rate increase for changes made by the Federal Communications Commission, as provided by PURA §58.056;

(2) A rate increase for companies with fewer than five million access lines that are complying with infrastructure commitments, as provided by PURA §58.057;
(3) A rate group reclassification, as provided by PURA §58.058.

(g) **Procedure for a rate increase prior to rate cap expiration.**
(1) Prior to the rate cap expiration, an electing company is required to file an application to propose an increase in the rate for a basic network service. The application must refer to this section, must provide sufficient documentation to demonstrate that the rate increase meets the criteria prescribed in PURA Chapter 58, must describe the increase, and must identify the classes of customers and competitors to be affected by the electing company's application. The application must also include any tariff sheets reflecting the proposed basic network service rate increase, as well as all data necessary to support the application. The application must include a copy of the text of any proposed notice to customers. The proposed notice to customers must comply with §26.208 of this title and must meet the criteria prescribed in PURA §58.059 and §53.103. The application must also state the electing company's preferred effective date, which must be no earlier than 90 days after completion of notice.
(2) The commission must cause notice of the application to be published in the Texas Register. The Texas Register notice must state the intervention deadline, which must be no earlier than 40 days following publication of notice. After publication of notice in the Texas Register, the presiding officer must establish a deadline for the filing of a staff recommendation, which must be no earlier than five days following the intervention deadline.
(3) Within 20 days after filing of the application, the presiding officer must notify the applicant if material deficiencies exist in the application and if the proposed notice is inadequate.
(4) Within 50 days after filing of the application, the applicant must file an affidavit attesting to the fact that notice to customers was published in accordance with the requirements of PURA §58.059 and §53.103. The affidavit must contain a copy of all notice given.
(5) Following receipt of a request for intervention filed by an affected party, or on the recommendation of commission staff, or on the commission's own motion, the commission may suspend the effective date of the proposed rate increase and may hold a hearing. Within 185 days of the filing of a sufficient application, the commission must issue an order approving or modifying the rate increase or, alternatively, rejecting the rate increase if it is not in compliance with this section and PURA §§58.056, 58.057 or 58.058. Any order modifying or rejecting the proposed rate increase must specify why the proposed increase is not in compliance with the applicable provisions of PURA §§58.056, 58.057 or 58.058 and the means by which the proposed increase may be brought into compliance.

(h) **Rate increase after rate cap expiration.** After a four-year period following Chapter 58 election or until September 1, 2005, whichever occurs later, a basic network service rate increase may be made in accordance with PURA §58.060.

(i) **Rate decrease.** Consistent with PURA §58.055(c), an electing company may decrease a rate for a basic service at any time to an amount above the service's appropriate cost. If the electing company has been required to perform or has elected to perform a long run incremental cost study, the appropriate cost for the service is the service's long run incremental cost.

(1) After commission approval of a LRIC floor, an electing company must follow the procedures in this subsection to decrease a rate for a basic network service or to change the tariff terms of a basic network service.

(2) An electing company must file an application to decrease the rate for or change the tariff terms of a basic network service. On the same date, an electing company must file one or more tariff sheets to decrease a rate for or change the tariff terms of a basic network service with the application and all data necessary to support the application must accompany the tariff sheets.

(3) The commission must cause notice of the application to be published in the Texas Register. The Texas Register notice must state the intervention deadline, which must be no earlier than 15 days following publication of notice. On or before five days after the intervention deadline, commission staff may file a recommendation to suspend, docket or reject the application. If either a request for intervention or a recommendation to docket is filed, the expedited administrative procedures in this subsection must no longer apply. If neither an intervention request nor a staff recommendation to suspend, docket or reject the application is filed, the tariff sheets must be approved by the commission effective ten days following the intervention deadline.

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

(1) Information filed in accordance with this section is presumed to be public information. An electing company has the burden of establishing that information filed in accordance with this section is proprietary or confidential.

(2) Nothing in this subsection must be construed to change the presumption that information filed in accordance with this rule is public information. An electing company that intends to rely upon data it purports is proprietary or confidential in support of an application made in accordance with this section must file such data confidentially. An electing company that intends to rely upon proprietary or confidential data has the burden of providing such data on the same date the associated tariff sheets are filed. In the event an electing company’s proprietary or confidential data is not provided with the associated tariff sheets, the procedural schedule will be adjusted day-for-day to reflect the number of days the proprietary or confidential data is delayed.

(k) **Additional notice requirement for an electing company serving more than five million access lines.** In addition to the notice requirements of §26.208 of this title and those applicable to informational notice filings, an electing company serving more than five million access lines in this state must, until September 1, 2003:

(1) Comply with the following notice requirements when proposing any changes in the generally available prices and terms under which the electing company offers basic telecommunications services regulated by the commission at retail rates to subscribers that are not telecommunications providers, including:

(A) Introduction of any new features or functions of basic services;

(B) Promotional offerings of basic services; or

(C) Discontinuation of then-current features or services.

(2) Notice must be provided to the following persons:

(A) A person who holds a certificate of operating authority in the electing company's certificated area or areas; or

(B) A person who has an effective interconnection agreement with the electing company.

(3) The following timelines must apply to the additional notice requirement:

(A) If the electing company is required to give notice to the commission, at the same time the company provides that notice; or

(B) If the electing company is not required to give notice to the commission, at least 45 days before the effective date of a price change or 90 days before the effective date of a change other than a price change, unless the commission determines that the notice should not be given.

(l) **Semi-annual notice for rates or terms of service.** Semi-annually, an electing company must notify affected persons, either by bill insert, bill message, or direct mail, that proposed changes in the rates or terms of basic network services are regularly published in the *Texas Register* through the Office of the Secretary of State. Such notification must also appear in the public information pages of all telephone directories published in Texas. The notification must identify the Internet address for the *Texas Register* (www.sos.state.tx.us) and must provide a toll-free phone number for affected persons to request direct notice from an electing company of proposed changes in the rates or terms of service. For purposes of notice, affected persons include the applicant's Texas customers, persons registered with the commission to offer long distance service, and persons certificated by the commission to provide local exchange telephone service.

§26.272. Interconnection.

(a) **Purpose.** The purpose of this section is to ensure that a telecommunications service provider that is certificated provides local exchange service, basic local telecommunications service, or switched access service within the state interconnect and maintains interoperable networks such that the benefits of local exchange competition are realized as envisioned under the provisions of the Public Utility Regulatory Act (PURA). The commission finds that interconnection is necessary to achieve competition in the local exchange market and is therefore in the public interest.

(b) **Definition.** The term "customer" when used in this section, means an end-user customer.

(c) **Application and Exceptions.**

(1) **Application.** This section applies to a certificated telecommunications utility (CTU) that provides local exchange service.

(2) **Exceptions.** Except as provided under this paragraph, a CTU providing local exchange service must comply with the requirements of this section.

(A) Holders of a service provider certificate of operating authority (SPCOA).

(i) The holder of an SPCOA that does not provide dial tone and only resells the telephone services of another CTU is subject only to the requirements of subsection (e)(1)(B)(ii) and (D)(i)-(vii) of this section and subsection (i)(1)-(3) of this section.

(ii) The underlying CTU providing service to the holder of an SPCOA referenced in clause (i) of this subparagraph must comply with the requirements of this section with respect to the customers of the SPCOA holder.

(B) Small incumbent local exchange companies (ILECs).

(i) This section applies to small ILECs to the extent required by 47 United States Code (U.S.C.) §251(f) (1996).

(ii) Notwithstanding the requirement in clause (i) of this subparagraph, small ILECs must terminate traffic of a CTU which originates and terminates within the small ILEC's extended local calling service (ELCS) or extended area service (EAS) calling scope, where the small ILEC has an ELCS or EAS arrangement with another DCTU. The termination of this traffic must be at rates, terms, and conditions prescribed by subsection (d)(4)(A) of this section.

(C) Rural telephone companies.

(i) This section also applies to rural telephone companies as defined in 47 U.S.C. §153 (1996) to the extent required by 47 U.S.C. §251(f) (1996).

(ii) Rural telephone companies must terminate traffic of a CTU that originates and terminates within the rural telephone company's ELCS or EAS calling scope, where the rural telephone company has an ELCS or EAS arrangement with another DCTU. The termination

of this traffic must be at rates, terms, and conditions as described in subsection (d)(4)(A) of this section.

(D) Small CTUs.

(i) A small CTU may petition for a suspension or modification of the application of this section in accordance with 47 U.S.C. §251(f)(2) (1996).

(ii) Small CTUs must terminate traffic of a CTU that originates and terminates within the small CTU's ELCS or EAS calling scope, where the small CTU has an ELCS or EAS arrangement with another DCTU. The termination of this traffic must be at rates, terms, and conditions as described in subsection (d)(4)(A) of this section.

(E) Deregulated companies and nondominant telecommunications utilities. Subsection (i)(2) and (3) of this section does not apply to deregulated companies holding a certificate of operating authority or to exempt carriers that meets the criteria of PURA §52.154.

(d) **Principles of interconnection.**

(1) **General principles.**

(A) Interconnection between CTUs must be established in a manner that is seamless, interoperable, technically and economically efficient, and transparent to the customer.

(B) Interconnection between CTUs must utilize nationally accepted telecommunications industry standards or mutually acceptable standards for construction, operation, testing and maintenance of networks, such that the integrity of the networks is not impaired.

(C) A CTU may not unreasonably:

(i) discriminate against another CTU by refusing access to the local exchange;

(ii) refuse or delay interconnections to another CTU;

(iii) degrade the quality of access provided to another CTU;

(iv) impair the speed, quality, or efficiency of lines used by another CTU;

(v) fail to fully disclose in a timely manner, on request, all available information necessary for the design of equipment that will meet the specifications of the local exchange network; or

(vi) refuse or delay access by any person to another CTU.

(D) An interconnecting CTU must negotiate rates, terms, and conditions for facilities, services, or any other interconnection arrangements required in accordance with this section.

(E) This section does not authorize an interconnecting CTU access to another CTU's network proprietary information or customer proprietary network information, customer-specific as defined in §26.5 of this title (relating to Definitions) unless otherwise permitted in this section.

(2) Technical interconnection principles. An interconnecting CTU must make a good-faith effort to accommodate each interconnecting CTU's technical requests,

provided that the technical requests are consistent with national industry standards and are in compliance with §26.52 of this title (relating to Emergency Operations), §26.53 of this title (relating to Inspections and Tests), §26.54 of this title (relating to Service Objectives and Performance Benchmarks), §26.57 of this title (relating to Requirements for a Certificate Holder's Use of an Alternate Technology to Meet its Provider of Last Resort Obligation), §26.89 of this title (relating to Nondominant Carriers' Obligations Regarding Information on Rates and Services), §26.107 of this title (relating to Registration of Interexchange Carriers (IXCs), Prepaid Calling Services Companies (PPC), and Other Nondominant Telecommunications Carriers), §26.128 of this title (relating to Telephone Directories), §26.206 of this title (relating to Depreciation Rates), and implementation of the requests would not cause unreasonable inefficiencies, unreasonable costs, or other detriment to the network of the CTU receiving the requests.

(A) An interconnecting CTU must ensure that each customer of other interconnecting CTUs are not required to dial additional digits or incur dialing delays that exceed industry standards to complete local calls as a result of interconnection.

(B) An interconnecting CTU must provide other interconnecting CTUs non-discriminatory access to signaling systems, databases, facilities, and information as required to ensure interoperability of networks and efficient, timely provision of services to customers.

(C) An interconnecting CTU must provide other interconnecting CTUs Common Channel Signaling System Seven connectivity where technically available.

(D) An interconnecting CTU is permitted a minimum of one point of interconnection in each exchange area or group of contiguous exchange areas within a single local access and transport area (LATA), as requested by the interconnecting CTU, and may negotiate with the other CTU for additional interconnection points. An interconnecting CTU must agree to construct, lease, and maintain the facilities necessary to connect networks, either by having one CTU provide the entire facility or by sharing the construction and maintenance of the facilities necessary to connect networks. The financial responsibility for construction and maintenance of such facilities is borne by the party who constructs and maintains the facility, unless the parties involved agree to other financial arrangements. Each interconnecting CTU is responsible for delivering its originating traffic to the mutually agreed upon point of interconnection or points of interconnection. Nothing in this subparagraph precludes a CTU from recovering the costs of construction and maintenance of facilities if such facilities are utilized by other CTUs.

(E) An interconnecting CTU must establish joint procedures for troubleshooting the portions of jointly used networks. Each CTU is responsible for maintaining and monitoring its own network such that the overall integrity of the interconnected network is maintained with service quality that is consistent with industry standards and is in compliance with §26.53 of this title.

(F) If an interconnecting CTU has sufficient facilities in place, it must provide intermediate transport arrangements between other interconnecting CTUs, upon request. A CTU providing intermediate transport must not negotiate termination on behalf of another CTU, unless the terminating CTU agrees to such an arrangement. Upon request, DCTUs within major metropolitan areas must contact other CTUs and arrange meetings, within 15 days of such request, to facilitate negotiations and provide a forum for discussion of network efficiencies and inter-company billing arrangements.

(G) Each interconnecting CTU is responsible for ensuring that traffic is properly routed to the connected CTU and jurisdictionally identified by percent usage factors or in a manner agreed upon by the interconnecting CTUs.

(H) An interconnecting CTU must allow other interconnecting CTUs non-discriminatory access to all facility rights-of-way, conduits, pole attachments, building entrance facilities, and other pathways, provided that the requesting CTU has obtained all required authorizations from the property owner or appropriate governmental authority.

(I) An interconnecting CTU must provide other interconnecting CTUs physical interconnection in a non-discriminatory manner. Physical collocation for the transmission of local exchange traffic must be provided to a CTU upon request, unless the CTU from which collocation is sought demonstrates that technical or space limitations make physical collocation impractical. Virtual collocation for the transmission of local exchange traffic must be implemented at the option of the CTU requesting the interconnection.

(J) Each interconnecting CTU is responsible for contacting the North American Numbering Plan (NANP) administrator for its own NXX codes and for initiating NXX assignment requests.

(3) **Principles regarding billing arrangements.**

(A) An interconnecting CTU must cooperatively provide other interconnecting CTUs with both answer and disconnect supervision as well as accurate and timely exchange of information on billing records to facilitate billing to customers, to determine intercompany settlements for local and non-local traffic, and to validate the jurisdictional nature of traffic, as necessary. Such billing records must be provided in accordance with national industry standards. For a billing interexchange carrier for jointly provided switched access services, such billing records include meet point billing records, interexchange carrier (IXC) billing name, IXC billing address, and Carrier Identification Codes (CICs). If exchange of CIC codes is not technically feasible, an interconnecting CTU must negotiate a mutually acceptable settlement process for billing IXCs for jointly provided switched access services.

(B) A CTU must enter into mutual billing and collection arrangements with other CTUs that are comparable to those existing between or among DCTUs, to ensure acceptance of each other's non-proprietary calling cards and operator-assisted calls.

(C) Upon a customer's selection of a CTU for local exchange service, that CTU must provide notification to the primary IXC through the Customer Account

Record Exchange (CARE) database, or comparable means if CARE is unavailable, of all information necessary for billing that customer. At a minimum, this information must include the name and contact person for the new CTU and the customer's name, telephone number, and billing number. In the event a customer's local exchange service is disconnected at the option of the customer or the CTU, the disconnecting CTU must provide notification to the primary IXC of such disconnection.

(D) A CTU must cooperate with IXCs to ensure that customers are properly billed for IXC services.

(4) **Principles regarding interconnection rates, terms, and conditions.**

(A) Criteria for setting interconnection rates, terms, and conditions. Interconnection rates, terms, and conditions must not be unreasonably preferential, discriminatory, or prejudicial, and must be non-discriminatory. The following criteria must be used to establish interconnection rates, terms, and conditions.

(i) Local traffic of a CTU that originates and terminates within the mandatory single or multiexchange local calling area available under the basic local exchange rate of a single DCTU will be terminated by the CTU at local interconnection rates. The local interconnection rates under this clause also apply with respect to mandatory EAS traffic originated and terminated within the local calling area of a DCTU if such traffic is between exchanges served by that single DCTU.

(ii) If a non-dominant certificated telecommunications utility (NCTU) offers, on a mandatory basis, the same minimum ELCS calling scope that a DCTU offers under its ELCS arrangement, a NCTU must receive arrangements for its ELCS traffic that are not less favorable than the DCTU provides for terminating mandatory ELCS traffic.

(iii) With respect to local traffic originated and terminated within the local calling area of a DCTU but between exchanges of two or more DCTUs governed by mandatory EAS arrangements, DCTUs must terminate local traffic of NCTUs at rates, terms, and conditions that are not less favorable than those between DCTUs for similar mandatory EAS traffic for the affected area. A NCTU and a DCTU may agree to terms and conditions that are different from those that exist between DCTUs for similar mandatory EAS traffic. The rates applicable to the NCTU for such traffic must reflect the difference in costs to the DCTU caused by the different terms and conditions.

(iv) With respect to traffic that originates and terminates within an optional flat rate calling area, whether between exchanges of one DCTU or between exchanges of two or more DCTUs, a DCTU must terminate such traffic of NCTUs at rates, terms, and conditions that are not less favorable than those between DCTUs for similar traffic. A NCTU and a DCTU may agree to terms and conditions that are different from those that exist between DCTUs for similar optional

EAS traffic. The rates applicable to the NCTU for such traffic must reflect the difference in costs to the DCTU caused by the different terms and conditions.

(v) A DCTU with more than one million access lines and a NCTU must negotiate new EAS arrangements in accordance with the following requirements.

(I) For traffic between an exchange and a contiguous metropolitan exchange local calling area, as defined in §26.5 of this title, the DCTU must negotiate with a NCTU for termination of such traffic if the NCTU includes such traffic as part of its customers' local calling area. These interconnection arrangements must not less favorable than the arrangements between DCTUs for similar EAS traffic.

(II) For traffic that does not originate or terminate within a metropolitan exchange local calling area, the DCTU must negotiate with a NCTU for the termination of traffic between the contiguous service areas of the DCTU and the NCTU if the NCTU includes such traffic as part of its customers' local calling area and such traffic originates in an exchange served by the DCTU. These interconnection arrangements must be not less favorable than the arrangements between DCTUs for similar EAS traffic.

(III) A NCTU must have the same obligation to negotiate similar EAS interconnection arrangements with respect to traffic between its service area and a contiguous exchange of the DCTU if the DCTU includes such traffic as part of its customers' local calling area

(vi) NCTUs are not precluded from establishing their own local calling areas or prices for purposes of retail telephone service offerings.

(B) Establishment of rates, terms, and conditions.

(i) A CTU involved in interconnection negotiations must ensure that all reasonable negotiation opportunities are completed prior to the termination of the first commercial call. The date upon which the first commercial call between CTUs is terminated signifies the beginning of a nine-month period in which each CTU must reciprocally terminate the other CTU's traffic at no charge, in the absence of mutually negotiated interconnection rates. Reciprocal interconnection rates, terms, and conditions must be established in accordance with the compulsory arbitration process in subsection (g) of this section. In establishing these initial rates and three years from termination of the first commercial call, no cost studies will be required from a new CTU.

(ii) An ILEC may adopt the tariffed interconnection rates approved for a larger ILEC or interconnection rates of a larger ILEC resulting from negotiations without providing the commission any additional cost justification for the adopted rates. If an ILEC adopts the tariffed

interconnection rates approved for a larger ILEC, it must file tariffs referencing the appropriate larger ILEC's rates. If an ILEC adopts the interconnection rates of a larger ILEC, the new CTU may adopt those rates as its own rates by filing tariffs referencing the appropriate larger ILEC's rates. If an ILEC chooses to file its own interconnection tariff, the new CTU must also file its own interconnection tariff.

(C) Public disclosure of interconnection rates, terms, and conditions. Interconnection rates, terms, or conditions must be made publicly available as provided in subsection (h) of this section.

(e) **Minimum interconnection arrangements.**

(1) In accordance with mutual agreements, interconnecting CTUs must provide each other non-discriminatory access to ancillary services such as repair services, E9-1-1, operator services, white pages telephone directory listing, publication and distribution, and directory assistance. The following minimum terms and conditions apply:

(A) Repair services. For purposes of this section, a CTU must be required to provide repair services for its own facilities regardless of whether such facilities are used by the CTU for retail purposes, provided by the CTU for resale purposes, or whether the facilities are ordered by another CTU for purposes of collocation.

(B) E-9-1-1 services. E-9-1-1 services include automatic number identification (ANI), ANI and automatic location identification (ALI) selective routing, or any combination of 9-1-1 features required by the 9-1-1 administrative entity or entities responsible for the geographic area involved.

(i) A CTU must meet the requirements of this clause before providing local exchange telephone service to any customer or any other service by which a customer may dial 9-1-1.

(I) A CTU is responsible for ordering the dedicated 9-1-1 trunk groups necessary to provide E9-1-1 service as approved by the appropriate 9-1-1 administrative entity or entities in the relevant 9-1-1 service agreement, and subject to the written process for documenting "unnecessary dedicated 9-1-1 trunks" in clause (vi)(I) of this subparagraph. Connection with the appropriate CTU in the provision of 9-1-1 service may be either directly or indirectly in a manner approved by the appropriate 9-1-1 administrative entity or entities.

(II) A CTU is responsible for enabling each customer of the CTU to dial the three digits 9,1,1 to access 9-1-1 service.

(III) A CTU is responsible for providing the ANI to the appropriate CTU operating the E911 selective routers, 9-1-1 tandems, IP-based 9-1-1 systems, NG9-1-1 systems, or appropriate PSAPs, as applicable. The ANI must include both the NPA or numbering plan digit (NPD), a component of the traditional 9-1-1 signaling protocol that identifies 1 of

4 possible NPAs, as appropriate, and the local telephone number of the 9-1-1 calling customer that can be used to successfully complete a return call to the customer.

(IV) A CTU is responsible for routing a 9-1-1 customer call, as well as interconnecting traffic on its network, to the appropriate E911 selective routers, 9-1-1 tandems, IP-based 9-1-1 systems, NG9-1-1 systems, or PSAPs, as applicable, based on the ANI or ALI. The appropriate 9-1-1 administrative entity or entities or the 9-1-1 network services provider, as applicable, must provide specifications to the CTU for routing purposes.

(V) The CTU is responsible for providing the ALI for each of its customers. The ALI must consist of the calling customer name, physical location, appropriate emergency service providers, and other similar standard ALI location data specified by the appropriate 9-1-1 administrative entity. For purposes of this subclause, other similar standard ALI data does not include supplemental data that is not part of the standard ALI location record.

(ii) A CTU must timely provide to the appropriate 911 administrative entity and the appropriate 9-1-1 database management services provider accurate and timely current information for all published, unpublished or nonpublished, and unlisted or nonlisted information associated with its customers for the purposes of emergency or E-911 services.

(I) For purposes of this clause, a CTU timely provides the information if, within 24 hours of receipt, it delivers the information to the appropriate 9-1-1 database management services provider, or if the CTU is the appropriate 9-1-1 database management services provider, it places the information in the 9-1-1 database.

(II) For purposes of this clause, the information sent by a CTU to the 9-1-1 database management services provider and the information used by the 9-1-1 database management services provider must be maintained in a fashion to ensure that the information is accurate at a percentage as close to 100% as possible. For purposes of this clause, the term “accurate” means a record that correctly routes a 9-1-1 call and provides correct location information relating to the origination of such call. For purposes of this clause, the term “percentage” means the total number of accurate records in that database divided by the total number of records in that database. In determining the accuracy of records, a CTU is not responsible for erroneous information provided to it by a customer or another CTU.

(III) An interconnecting CTU must execute confidentiality agreements with other interconnecting CTUs, as necessary, to prevent the unauthorized disclosure of unpublished or unlisted numbers. An interconnecting CTU must be allowed access to the ALI database or its equivalent by the appropriate 9-1-1 database management services provider for verification purposes. The appropriate 9-1-1 administrative entity must provide non-discriminatory access to the master street address guide.

(iii) A CTU is responsible for developing a 9-1-1 disaster recovery service restoration plan with input from the appropriate 9-1-1 administrative entity. This plan must identify the actions to be taken in the event of a network-based 9-1-1 service failure. The goal of such actions is the efficient and timely restoration of 9-1-1 service. Each CTU must notify the appropriate 9-1-1 administrative entity or entities of any changes in the CTU's network-based services and other services that may require changes to the plan.

(iv) An interconnecting CTU must provide other interconnecting CTUs and the appropriate 9-1-1 administrative entity or entities notification of scheduled outages for direct dedicated 9-1-1 trunks at least 48 hours prior to such outages. In the event of unscheduled outages for direct dedicated 9-1-1 trunks, each interconnecting CTU must provide other interconnecting CTUs and the appropriate 9-1-1 administrative entities immediate notification of such outages.

(v) Each NCTU's rates for 9-1-1 service to a public safety answering point is presumed to be reasonable if they do not exceed the rates charged by the ILEC for similar service.

(vi) Unless otherwise determined by the commission, nothing in this rule, any interconnection agreement, or any commercial agreement may be interpreted to supersede the appropriate 9-1-1 administrative entity's authority to migrate to newer functionally equivalent IP-based 9-1-1 systems or NG9-1-1 systems or the 9-1-1 administrative entity's authority to require the removal of unnecessary direct dedicated 9-1-1 trunks, circuits, databases, or functions.

(I) For purposes of this clause, "unnecessary direct dedicated 9-1-1 trunks" means those dedicated 9-1-1 trunks that generally would be part of a local interconnection arrangement but for: the CTU's warrant in writing that the direct dedicated 9-1-1 trunks are unnecessary and all 9-1-1 traffic from the CTU will be accommodated by another 9-1-1 service arrangement that has been approved by the appropriate 9-1-1 administrative entities; and written approval from the appropriate 9-1-1 administrative entities accepting the CTU's warrant. A 9-1-1 network services provider or CTU presented with such written documentation from the CTU and the appropriate 9-1-1 administrative

entities must rely on the warrant of the CTU and the appropriate 9-1-1 entities.

(II) Subclause (I) of this clause is intended to promote and ensure collaboration so that 9-1-1 service architecture and provisioning modernization can proceed expeditiously for the benefit of improvements in the delivery of 9-1-1 emergency services. Subclause (I) of this clause is not intended to require or authorize a 9-1-1 administrative entity's rate center service plan specifications or a 9-1-1 network architecture deviation that causes new, material cost shifting between telecommunications providers or between telecommunications providers and 9-1-1 administrative entities. Examples of such a deviation would be points of interconnection different from current LATA configurations and requiring provisioning of the 9-1-1 network with a similar type deviation that may involve new material burdens on competition or the public interest.

(C) Operator services. An interconnecting CTU must negotiate to ensure the interoperability of operator services between networks, including the ability of operators on each network to perform such operator functions as reverse billing, line verification, call screening, and call interrupt.

(D) White pages telephone directory and directory assistance. An interconnecting CTU must negotiate to ensure provision of white pages telephone directory and directory assistance services.

(i) Appropriate information of each customer of an NCTU, including telephone numbers, must be included on a non-discriminatory basis in each DCTU's white pages directory associated with the geographic area covered by the white pages telephone directory published by the DCTUs. Similarly, any white pages telephone directory provided to a customer of an NCTU by a NCTU must have each corresponding DCTU listings available on a non-discriminatory basis. Each entry of NCTU customers in the DCTU white pages telephone directory must be interspersed in correct alphabetical sequence among the entries of the DCTU customers and must be no different in style, size, or format than the entries of the DCTU customers, unless requested otherwise by the NCTU. The CTU or its affiliate publishing a white pages telephone directory on behalf of the CTU must not directly charge the customer of another CTU located in the geographic areas covered by the white pages telephone directory for white pages listings or directory.

(ii) Each customer listing located within the local calling area of a NCTU, but not located within the local calling area of the DCTU publishing the white pages telephone directory, must be included in a separate section of the DCTU's white pages telephone directory at the option of the NCTU.

(iii) A CTU must provide directory listings and related updates to the CTU or affiliate of the CTU that publishes a white pages telephone directory on behalf of the CTU, or to any CTU providing directory assistance, in a timely manner to ensure inclusion in the annual white page listings and provision of directory assistance service that complies with §26.128 of this title. A CTU or affiliate of the CTU that publishes a white pages telephone directory on behalf of the CTU must be responsible for providing all other CTUs with timely information regarding deadlines associated with its published white pages telephone directory.

(iv) A CTU must, upon request, provide accurate and current subscriber listings (name, address, telephone number) and updates in a readily usable format and in a timely manner, on a non-discriminatory basis, to publishers of yellow pages telephone directory. A CTU must not provide listings of subscribers desiring non-listed status for publication purposes.

(v) White pages telephone directories must be distributed to each customer located within the geographic area covered by the white pages telephone directory on non-discriminatory terms and conditions by the CTU or affiliate of the CTU that publishes the white pages telephone directory.

(vi) A CTU or affiliate of the CTU that publishes a white pages telephone directory on behalf of the CTU must provide every other CTU a single page in the information section of the white pages telephone directory for each CTU to convey critical customer contact information regarding emergency services, billing and service information, repair services and other pertinent information. The CTU's pages must be arranged in alphabetical order. Additional access to the information section of the white pages telephone directory are subject to negotiations.

(vii) A CTU must provide information that identifies customers desiring non-listed or non-published telephone numbers or non-published addresses to the CTU or affiliate of the CTU that publishes a white pages telephone directory on behalf of the CTU and to the CTU maintaining the directory assistance database. A CTU or affiliate of the CTU that publishes a white pages telephone directory on behalf of the CTU must not divulge such non-listed or non-published telephone numbers or addresses and the CTU maintaining the directory assistance database must not divulge such non-published telephone numbers or addresses.

(viii) CTUs must provide each other non-discriminatory access to directory assistance databases.

(2) At a minimum, interconnecting CTUs must negotiate to ensure the following:

(A) Non-discriminatory access to databases such as 800 and Line Information Data Base (LIDB) where technically feasible, to ensure interoperability

between networks and the efficient, timely provision of service to customers;

(B) non-discriminatory access to Telecommunications Relay Service;

(C) Common Channel Signaling interconnection including transmission of privacy indicator where technically available;

(D) non-discriminatory access to all signaling protocols and all elements of signaling protocols used in routing local and interexchange traffic, including signaling protocols used to query call processing databases, where technically feasible;

(E) number portability and the inclusion of the NCTU's NXX code(s) in the Local Exchange Routing Guide and related systems;

(F) non-discriminatory handling, including billing, of mass announcement/audiotext calls including 900 and 976 calls;

(G) provision of intercept services for a specific telephone number in the event a customer discontinues service with one CTU, initiates service with another CTU, and the customer's telephone number changes;

(H) cooperative engineering, operations, maintenance and billing practices and procedures; and

(I) non-discriminatory access to Advanced Intelligent Network (AIN), where technically available.

(f) **Negotiations.**

(1) A negotiating party, including a CTU, must engage in good-faith negotiations and cooperative planning as necessary to achieve mutually agreeable interconnection arrangements.

(2) Before terminating its first commercial telephone call, a CTU requesting interconnection must negotiate with each CTU or other negotiating party that is necessary to complete all telephone calls, including local service calls and EAS or ELCS calls, made by or placed to a customer of the requesting CTU. Upon request, DCTUs within major metropolitan calling areas will contact other CTUs and arrange meetings, within 15 days of such request, to facilitate negotiations and provide a forum for discussions of network efficiencies and intercompany billing arrangements.

(3) Unless the negotiating parties establish a mutually agreeable date, negotiations are deemed to begin on the date when the CTU or other negotiating party from which interconnection is being requested receives the request for interconnection from the CTU seeking interconnection. The request must:

(A) be in writing and hand-delivered; sent by certified mail or by facsimile;

(B) identify the initial specific issues to be resolved, the specific underlying facts, and the requesting CTU's proposed resolution of each issue;

(C) provide any other material necessary to support the request, included as appendices; and

(D) provide the identity of the person authorized to negotiate for the requesting CTU.

(4) The requesting CTU may identify additional issues for negotiation without causing an alteration of the date on which negotiations are deemed to begin.

(5) The CTU or negotiating party from which interconnection is sought must respond to the interconnection request no later than 14 working days from the date the request is received. The response must:
  (A) be in writing and hand-delivered, sent by certified mail, or by facsimile;
  (B) respond specifically to the requesting party's proposed resolution of each initial issue identified by the requesting party, identify the specific underlying facts upon which the response is based and, if the response is not in agreement with the requesting party's proposed resolution of each issue, the responding party's proposed resolution of each issue;
  (C) provide any other material necessary to support the response, included as appendices; and
  (D) provide the identity of the person authorized to negotiate for the responding party.

(6) At any point during the negotiations required under this subsection, a CTU or negotiating party may request the commission designee to participate in the negotiations and to mediate any differences arising in the course of the negotiation.

(7) An interconnecting CTU may, by written agreement, accelerate the requirements of this subsection with respect to a particular interconnection agreement except that the requirements of subsection (g)(1)(A) of this section must not be accelerated.

(8) Any disputes arising under or pertaining to negotiated interconnection agreements must be resolved in accordance with Chapter 21, Subchapter E, of this title (relating to Post-Interconnection Agreement Dispute Resolution).

(g) **Compulsory arbitration process.**

(1) A negotiating CTU that is unable to reach mutually agreeable terms, rates, or conditions for interconnection with any CTU or negotiating party may petition the commission to arbitrate any unresolved issues. To initiate the arbitration procedure, a negotiating CTU:
  (A) must file its petition with the commission on or between 135 and 160 days after the date on which its request for negotiation under subsection (f) of this section was received by the other CTU involved in the negotiation;
  (B) must provide the identity of each CTU or negotiating party with which agreement cannot be reached but whose cooperation is necessary to complete all telephone calls made by or placed to the customers of the requesting CTU;
  (C) must provide all relevant documentation concerning the unresolved issues;
  (D) must provide all relevant documentation concerning the position of each of the negotiating parties with respect to those issues;
  (E) must provide all relevant documentation concerning any other issue discussed and resolved by the negotiating parties; and
  (F) must send a copy of the petition and any documentation to the CTU or negotiating party with which agreement cannot be reached, not later than the day on which the commission receives the petition.

(2) A non-petitioning party to a negotiation under subsection (f) of this section may respond to the other party's petition and provide such additional information within 25 days after the commission receives the petition.

(3) The compulsory arbitration process must be completed no later than nine months after the date on which a CTU receives a request for interconnection under subsection (f) of this section.

(4) Any disputes arising under or pertaining to arbitrated interconnection agreements must be resolved in accordance with Chapter 21, Subchapter E of this title.

(h) **Filing of rates, terms, and conditions.**

(1) Rates, terms and conditions resulting from negotiations, compulsory arbitration process, and statements of generally available terms.

(A) A CTU from which interconnection is requested must file each agreement adopted by negotiation or by compulsory arbitration with the commission. The commission will make such an agreement available for public inspection and copying within ten days after the agreement is approved by the commission in accordance with subparagraphs (C) and (D) of this paragraph.

(B) An ILEC serving greater than five million access lines may prepare and file with the commission, a statement of terms and conditions that the ILEC generally offers within the state in accordance with 47 U.S.C. §252(f) (1996). The commission will make such a statement available for public inspection and copying within ten days after the statement is approved by the commission in accordance with subparagraph (E) of this paragraph.

(C) The commission will reject an agreement, in whole or in part, adopted by negotiation if it finds that:

(i) the agreement (or any portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or

(ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.

(D) The commission will reject an agreement, in whole or in part, adopted by compulsory arbitration under subsection (g) of this section, in accordance with guidelines found in 47 U.S.C. §252(e)(2)(B) (1996).

(E) The commission will review the statement of generally available terms filed under subparagraph (B) of this paragraph, in accordance with guidelines found in 47 United States Code §252(f) (1996). The submission or approval of a statement under this paragraph does not relieve an ILEC serving greater than five million access lines of its duty to negotiate the terms and conditions of an agreement in accordance with 47 U.S.C. §251(c)(1) (1996).

(2) Rates, terms or conditions among DCTUs. Within 15 days of a request from a CTU negotiating interconnection arrangements with a DCTU, a non-redacted version of any agreement reflecting the rates, terms, and conditions between or among DCTUs which relate to interconnection arrangements for similar traffic must be disclosed to the CTU, subject to commission-approved non-disclosure or protective agreement. A non-redacted version of the same agreement must be disclosed to commission staff at the same time if requested, subject to commission-approved non-disclosure or protective agreement.

(i) Customer safeguards.

(1) **Requirements for provision of service to customers.** Nothing in this section or in a = CTU's tariffs precludes a customer of a CTU from purchasing local exchange service from more than one CTU at a time. A CTU is prohibited from connecting, disconnecting, or moving any wiring or circuits on the customer's side of the demarcation point without the customer's express authorization as specified in §26.130 of this title, (relating to Selection of Telecommunications Utilities).

(2) **Requirements for CTUs ceasing operations.** If a CTU ceases operations, the CTU is responsible for notifying the commission and each customer of the CTU at least 61 working days in advance that each customer's service will be terminated. The notification must include a listing of all alternative service providers available to customers in the exchange and specify the date on which service will be terminated.

(3) **Requirements for service installations.** A DCTU that interconnect with an NCTU is responsible for meeting the installation of service requirements under §26.54 of this title in providing service to the NCTU. NCTUs must make a good-faith effort to meet the requirements for installation in §26.54 of this title, and may negotiate with the DCTU to establish a procedure to meet this goal.

(A) For those customers for whom the NCTU provides dial tone but not the local loop, 95% of the NCTU's service orders must be completed in no more than ten working days from request for service, unless a later date is agreed to by the customer.

(B) For those customers for whom the NCTU does not provide dial tone and resells the telephone services of a DCTU, 95% of the NCTU's service orders must be completed no more than seven working days from request for service, unless the customer agrees to a later date.

(C) For those customers where the NCTU uses facilities other than a DCTU's resale facilities obtained through Public Utility Regulatory Act §60.041, the NCTU must complete service orders within 30 calendar days from the request for service, unless a later date is agreed to by the customer.

(D) A DCTU must not discriminate between the DCTU's customers and the customers of an NCTU if the DCTU is able to install service in less than the time permitted under §26.54 of this title.

§26.276. Unbundling.

(a) **Purpose.** The purpose of this section is to implement Public Utility Regulatory Act (PURA) §60.021, which requires an incumbent local exchange company (ILEC), at a minimum, to unbundle its network to the extent ordered by the Federal Communications Commission (FCC).

(b) **Application.**

(1) The provisions of this section apply, as of its effective date, to each ILEC that serves one million or more access lines.

(2) The provisions of this section apply upon a bona fide request to each ILEC that serves fewer than one million access lines.

(c) **Unbundling requirements.**

(1) **Unbundling in accordance with current FCC requirements**. Each ILEC that is subject to this section must unbundle as specified in subparagraphs (A) and (B) of this paragraph. An ILEC with interstate tariffs in effect must unbundle its network or services under the same terms and conditions, except for price, as it unbundles its interstate services, unless ordered otherwise by the commission. The ILEC must also not impose a charge or rate element that is not included in its interstate tariffs for these unbundled rate elements. Nothing in this paragraph precludes the commission from requiring further unbundling of local exchange company services, including the services unbundled in accordance with this paragraph.

(A) The ILEC's network must be unbundled to the extent ordered by the FCC in compliance with its open network architecture requirements; and

(B) Signaling for tandem switching must be unbundled to the extent ordered by the FCC in compliance with CC Docket Number 91-141, Third Report and Order, In the Matter of Expanded Interconnection with Local Telephone Company Facilities, Transport Phase II.

(2) **Unbundling in accordance with future FCC requirements.** An ILEC must unbundle its network or services for intrastate services to the extent ordered, in the future, by the FCC for interstate services. An ILEC with interstate tariffs in effect must unbundle these services under the same terms and conditions, except for price, as it unbundles its interstate services, unless ordered otherwise by the commission. The ILEC must also not impose a charge or rate element that is not included in its interstate tariffs for unbundling. Nothing in this paragraph precludes the commission from requiring further unbundling of local exchange company services, including the services unbundled in accordance with this paragraph.

(d) **Costing and pricing of services in compliance with this section.**

(1) **Cost standard.** Services unbundled in compliance with this section must be subject to the following cost standard**.**

(A) The cost standard for unbundled services must be the long run incremental costs (LRIC) of providing the service.

(B) Any ILEC subject to §26.214 of this title (relating to Long Run Incremental Cost (LRIC) Methodology for Services provided by Certain Incumbent

Local Exchange Companies (ILECs)) or §26.215 of this title (relating to Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility Services), as applicable, must file LRIC studies in accordance with that rule for unbundled components specified in subsection (c)(1) of this section.

(C) For any ILEC that is subject to §26.214 or §26.215 of this title, the cost standard for unbundled services required under subsection (c)(2) of this section must be the long run incremental costs as prescribed by §26.214 or §26.215 of this title, as applicable.

(D) The long run incremental cost standard does not apply if the ILEC proposes rates that are the same as the rates in effect for the carrier's interstate provision of the same or equivalent unbundled service or if the ILEC adopts rates of another ILEC in accordance with paragraph (2)(B) of this subsection.

(2) **Pricing standard.** Services unbundled in compliance with this section must be subject to the following pricing standard.

(A) Any ILEC may propose rates, without cost justification, that are at parity with the rates in effect for the carrier's interstate provision of the same or equivalent unbundled service. The ILEC must amend its intrastate rates, terms and conditions to be consistent with subsequent revisions in its interstate tariffs providing for unbundling in accordance with the filing requirements established in subsection (f)(4) of this section.

(B) In addition to the provision in subparagraph (A) of this paragraph, ILECs that are not subject to §26.214 or §26.215 of this title may adopt the rates of another ILEC that are developed in accordance with the requirements of this section.

(C) If an ILEC proposes rates that are not at parity with the rates in effect for the carrier's interstate provision of the same or equivalent unbundled service or does not adopt the rates of another ILEC in accordance with subparagraph (B) of this paragraph, the following requirements apply to any service approved under this section:

(i) Unless waived or modified by the presiding officer, the service must be offered in every exchange served by the ILEC, except exchanges in which the ILEC's facilities do not have the technical capability to provide the service.

(ii) If the sum of the rates of the new unbundled components is equal to the price of the original bundled service and if the ratio of the rate of each unbundled component to its LRIC is the same for each unbundled component, there is a rebuttable presumption that the rate of an unbundled component is reasonable.

(iii) The proposed rates and terms of the service must not be unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive.

(D) Rates based upon the new LRIC cost studies required under paragraph (1)(B) of this subsection are subject to §26.214 or §26.215 of this title, as

applicable, to the same extent as any other service offered by an ILEC subject to the applicable provision.

(e) **Basket assignment.** An ILEC electing for incentive regulation under PURA Chapter 58 must, in its compliance tariff filed in accordance with subsection (f) of this section, include a proposal and rationale for designating the unbundled components as basic services or non-basic services.

(f) **Filing requirements.**

(1) **Initial filing to implement subsection (c)(1) of this section in effect for ILECs serving one million or more access lines**. An ILEC serving one million or more access lines must file initial tariff amendments to implement the provisions of subsection (c)(1) of this section not later than 60 days from the effective date of this section. The proposed effective date of such filings must be not later than 30 days after the filing date, unless suspended. Tariff revisions filed in accordance with this paragraph must not be combined in a single application with any other tariff revision.

(2) **Filings to comply with subsection (c)(2) of this section for ILECs serving one million or more access lines.** An ILEC serving one million or more access lines must file tariff amendments to implement the provisions of subsection (c)(2) of this section, within 60 days of the effective date of its interstate tariff providing for unbundling. The proposed effective date of such filings must be not later than 30 days after the filing date, unless suspended. Tariff revisions filed in accordance with this paragraph must not be combined in a single application with any other tariff revision.

(3) **Filings to implement subsections (c)(1) and (2) of this section for ILECs serving fewer than one million access lines.** If an ILEC serving fewer than one million access lines receives a bona fide request, the ILEC must unbundle its network or services in accordance with the bona fide request within 90 days from the date of receipt of the bona fide request or has the burden of demonstrating the reasons for not unbundling in accordance with the bona fide request.

(4) **Filings to comply with subsection (d)(2)(A) of this section.** An ILEC proposing rates in accordance with subsection (d)(2)(A) of this section must file tariff amendments to implement the revisions in its interstate tariffs providing for unbundling, within 30 days of the effective date of its interstate tariff providing for unbundling. The proposed effective date of such filings must be not later than 30 days after the filing date, unless suspended. Tariff revisions filed in accordance with this paragraph must not be combined in a single application with any other tariff revision.

(g) **Requirements for notice and contents of application in compliance with this section.**

(1) **Notice of Application.** The presiding officer may require notice to be provided to the public as required by Chapter 22, Subchapter D of this title (relating to Notice). The notice must include, at a minimum, a description of the service, the proposed rates and other terms of the service, the types of customers likely to be affected if the service is approved, the probable effect on ILEC's revenues if the service is

approved, the proposed effective date for the service, and the following language: "Persons who wish to comment on this application should notify the commission by (specified date, ten days before the proposed effective date). Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Consumer Protection Division at (512) 936-7120 or toll free at (888) 782-8477. Hearing- and speech-impaired individuals may contact the commission through Relay Texas at (800) 735-2989."

(2) **Contents of application for an ILEC serving one million or more access lines that is required to comply with subsection (f)(1), (2), and (4) of this section.** An ILEC must request approval of an unbundled service by filing an application that complies with the requirements of this section. A copy of the application must be delivered to the Office of Public Utility Counsel. The application must contain the following information:

(A) a description of the proposed service and the rates, terms and conditions, under which the service is proposed to be offered and a demonstration that the proposed rates, terms and conditions comply with the requirements in subsections (c), (d), and (e) of this section, as applicable;

(B) a statement detailing the type of notice, if any, the ILEC has provided or intends to provide to the public regarding the application and a brief statement explaining why the ILEC's notice proposal is reasonable;

(C) a copy of the text of the notice, if any;

(D) a long run incremental cost study supporting the proposed rates, if the rates are not at parity with the carrier's interstate rates;

(E) detailed documentation showing that the proposed service is priced above the long run incremental cost of such service, including all workpapers and supporting documentation relating to computations or assumptions contained in the application, if the rates are not at parity with the carrier's interstate rates;

(F) projection of revenues, demand, and expenses demonstrating that in the second year after the service is first offered, the proposed rates will generate sufficient annual revenues to recover the annual long run incremental costs of providing the service, as well as a contribution for joint or common costs, if the rates are not at parity with the carrier's interstate rates;

(G) explanation that the proposed rates and terms of the service are not unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive;

(H) the information required by §§26.121 of this title (relating to Privacy Issues), 26.122 of this title (relating to Customer Proprietary Network Information, and 26.123 of this title (relating to Caller Identification Services); and

(I) any other information which the ILEC wants considered in connection with the commission's review of its application.

(3) **Contents of application for an ILEC serving fewer than one million access lines that is required to comply with subsection (f)(3) and (4) of this section.** An

ILEC must file with the commission an application complying with the requirements of this section. A copy of the application must the Office of Public Utility Counsel. The application must contain the following:

(A) contents of the application required by paragraph (2)(A), (B), (C), (H), and (I) of this subsection;

(B) contents of the application required by paragraph (2)(D), (E), (F), and (G) of this subsection, if the rates are not at parity with the carrier's interstate rates or the rates of another ILEC;

(C) a description of the proposed service and the rates, terms, and conditions under which the service is proposed to be offered and an affidavit from the general manager or an officer of the ILEC approving the proposed service;

(D) a notarized affidavit from a representative of the ILEC affirming that the rates are just and reasonable and are not unreasonably preferential, prejudicial, or discriminatory; subsidized directly or indirectly by regulated monopoly services; or predatory, or anticompetitive; and

(E) projections of the amount of revenues that will be generated by the proposed service.

(h) **Commission processing of application.**

(1) **Administrative review**. An application considered under this section is eligible for administrative review unless the ILEC requests the application be docketed or the presiding officer, for good cause, determines at any point during the review that the application should be docketed.

(A) The operation of the proposed rate schedule may be suspended for 35 days after the effective date of the application. The effective date must be according to the requirements in subsection (f) of this section.

(B) The application will be reviewed for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant will be notified within ten working days of the filing date of the specific deficiency in its application, and the earliest possible effective date of the application will be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any deadlines will be 30 days from the day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date.

(C) While the application is under administrative review, commission staff and the staff of the Office of the Public Utility Counsel (OPUC) may submit requests for information to the ILEC. Answers to such requests for information must be filed with the commission and a copy must be provided to OPUC within ten days after receipt of the request by the ILEC.

(D) No later than 20 days after the filing date of the sufficient application, interested persons may provide to the commission staff written comments or recommendations concerning the application. Commission staff must and OPC may file with the presiding officer written comments or recommendations concerning the application.

(E) No later than 35 days after the effective date of the application, the presiding officer will issue an order approving, denying, or docketing the ILEC's application.

(2) **Approval or denial of application**. The application will be approved by the presiding officer if the proposed tariff meets the requirements in this section. If, based on the administrative review, the presiding officer determines, that one or more of the requirements not waived have not been met, the presiding officer will docket the application.

(3) **Standards for docketing.** The application may be docketed in accordance with §22.33(b) of this title (relating to Tariff Filings).

(4) **Review of the application after docketing**. If the application is docketed, the operation of the proposed rate schedule will be automatically suspended to a date 120 days after the applicant has filed its direct testimony and exhibits, or 155 days after the effective date, whichever is later. Affected persons may move to intervene in the docket, and the presiding officer may schedule a hearing on the merits. The application will be processed in accordance with the commission's rules applicable to docketed cases.

(5) **Interim rates.** For good cause, interim rates may be approved after docketing. If the service requires substantial initial investment by customers before they may receive the service, interim rates will be approved only if the ILEC shows, in addition to good cause, that it will notify each customer prior to purchasing the service that the customer's investment may be at risk due to the interim nature of the service.

(i) **Commission processing of waivers**. Any request for modification or waiver of the requirements of this section must include a complete statement of the ILEC's arguments and factual support for that request. The presiding officer will rule on the request expeditiously.

§26.403. Texas High Cost Universal Service Plan (THCUSP).

(a) **Purpose.** This section establishes guidelines for financial assistance to eligible telecommunications providers (ETPs) that serve the high cost rural areas of the state, other than study areas of small and rural incumbent local exchange companies (ILECs), so that basic local telecommunications service may be provided at reasonable rates in a competitively neutral manner.

(b) **Application.** This section applies to telecommunications providers that have been designated ETPs by the commission in accordance with §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).

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

(1) **Business line** -- The telecommunications facilities providing the communications channel that serves a single-line business customer's service address. For the purpose of this definition, a single-line business line is one to which multi-line hunting, trunking, or other special capabilities do not apply. For a line served by an ILEC, a business line is a line served in accordance with the ILEC's business service tariff or a package that includes such a tariffed service. For a line served by an ILEC in accordance with a customer specific contract or that is otherwise not served in accordance with a tariff, to qualify as a business line, the service must be provided in accordance with a customer application, subscriber agreement, or contract entered into by a public or private organization of any character, or a representative or agent of such entity, irrespective of the person or entity in actual possession of the telephone device. For a line that is served by an ETP other than an ILEC, to qualify as a business line, the service must be provided in accordance with a customer application, subscriber agreement, or contract entered into by a public or private organization of any character, or a representative or agent of such entity, irrespective of the person or entity in actual possession of the telephone device.

(2) **Eligible line** -- A residential line or a single-line business line over which an ETP provides the service supported by the THCUSP through its own facilities, purchase of unbundled network elements (UNEs), or a combination of its own facilities and purchase of UNEs. An eligible line may be a business line or a residential line but cannot be both.

(3) **Eligible telecommunications provider (ETP)** -- A telecommunications provider designated by the commission in accordance with §26.417 of this title.

(4) **Physical 911 address** -- For the purposes of this section, a physical 911 address is an address transmitted to the applicable emergency service providers by an ETP with respect to a line that is not stated in GPS coordinates.

(5) **Residential line** -- The telecommunications facilities providing the communications channel that serves a residential customer's service address. For the purpose of this definition, a residential line is one to which multi-line hunting,

trunking, or other special capabilities do not apply. A line that qualifies as a business line does not qualify as a residential line.

(6) **Service Address** -- For the purposes of this section, a business or residential customer's service address is defined using the following criteria:

(A) A service address is the unique physical street address, including any suite or unit number, where a line is provided to a customer, except as provided in clauses (i)-(ii) and subparagraph (B) of this paragraph.

(i) If no unique physical street address is available, a physical 911 address must be used.

(ii) If no unique physical street address and no physical 911 address are available, the business or residential customer's service address must be an area of land under common operation or use as defined by a deed, state permit, lease name, or licensed or registered field of operation, which must be described by an ETP using GPS coordinates. Multiple buildings within a single area of land under common operation or use must not qualify as separate service addresses, even if the GPS coordinates for each building are different.

(B) For eligible lines served using commercial mobile radio service, a service address for such a line may be the customer's billing address for the purposes of this definition.

(d) **Service to be supported by the THCUSP.** The THCUSP must support basic local telecommunications services provided by an ETP in high cost rural areas of the state. Local measured residential service, if chosen by the customer and offered by the ETP, must also be supported.

(1) **Initial determination of the definition of basic local telecommunications service.** Basic local telecommunications service must consist of the following:

(A) flat rate, single party residential and business local exchange telephone service, including primary directory listings;

(B) tone dialing service;

(C) access to operator services;

(D) access to directory assistance services;

(E) access to 911 service where provided by a local authority;

(F) telecommunications relay service;

(G) the ability to report service problems seven days a week;

(H) availability of an annual local directory;

(I) access to toll services; and

(J) lifeline service.

(2) **Subsequent determinations.**

(A) Initiation of subsequent determinations.

(i) The definition of the services to be supported by the THCUSP must be reviewed by the commission every three years from September 1, 1999.

(ii) The commission may initiate a review of the definition of the services to be supported on its own motion at any time.

(B) **Criteria to be considered in subsequent determinations.** In evaluating whether services should be added to or deleted from the list of supported services, the commission may consider the following criteria:

(i) the service is essential for participation in society;

(ii) a substantial majority, 75% of residential customers, subscribe to the service;

(iii) the benefits of adding the service outweigh the costs; and

(iv) the availability of the service, or subscription levels, would not increase without universal service support.

(e) **Criteria for determining amount of support under THCUSP**. The commission will determine the amount of per-line support to be made available to ETPs in each eligible wire center in accordance with this section. The amount of support available to each ETP must be calculated using the base support amount as of the effective date of this section and applying the annual reductions as described in this subsection. As used in this subsection, "basic local telecommunications service" refers to services available to residential customers only, and "exchange" or "wire center" refer to regulated exchanges or wire centers only.

(1) **Determining base support amount available to ILEC ETPs**. The initial annual base support amount for an ILEC ETP must be the annualized monthly THCUSP support amount for the month preceding the effective date of this section, less the 2011 amount of support disbursed to the ILEC ETP from the federal universal service fund for High Cost Loop, High Cost Model, Safety Net Additive, and Safety Valve components of the frozen high-cost support as determined by the Universal Service Administration Company in accordance with 47 C.F.R. §54.312(a). The initial per-line monthly support amount for a wire center must be the per-line support amount for the wire center for the month preceding the effective date of this section, less each wire center's pro rata share of one-twelfth of the 2011 amount of support disbursed to the ILEC ETP from the federal universal service fund for High Cost Loop, High Cost Model, Safety Net Additive, and Safety Valve components of the frozen high-cost support determined by the Universal Service Administration Company in accordance with 47 C.F.R §54.312(a). The initial annual base support amount must be reduced annually as described in paragraph (3) of this subsection.

(2) **Determination of the reasonable rate**. The reasonable rate for basic local telecommunications service will be determined by the commission in a contested case proceeding. To the extent that an ILEC ETP's existing rate for basic local telecommunications service in any wire center is less than the reasonable rate, the ILEC ETP may, over time, increase its rates for basic local telecommunications service to an amount not to exceed the reasonable rate. The increase to the existing rate must not in any one year exceed an amount to be determined by the commission in the contested case proceeding. An ILEC ETP may, in its sole discretion, accelerate its THCUSP reduction in any year by as much as 10% and offset such reduction with a corresponding local rate increase in order to produce rounded rates. In no event will any such acceleration obligate the ETP to reduce its THCUSP

support in excess of the total reduction obligation initially calculated under paragraph (3) of this subsection.

(3) **Annual reductions to THCUSP base support and per-line support recalculation**. As part of the contested case proceeding referenced in paragraph (2) of this subsection, each ILEC ETP must, using line counts as of the end of the month preceding the effective date of this rule, calculate the amount of additional revenue that would result if the ILEC ETP were to charge the reasonable rate for basic local telecommunications service to all residential customers for those services where the price, or imputed price, are below the reasonable rate. Lines in exchanges for which an application for deregulation is pending as of June 1, 2012 must not be included in this calculation. If the application for deregulation for any such exchanges subsequently is denied by the commission, the ILEC ETP must, within 20 days of the final order denying such application, submit revised calculations including the lines in those exchanges for which the application for deregulation was denied. Without regard to whether an ILEC ETP increases its rates for basic local telecommunications service to the reasonable rate, the ILEC ETP's annual base support must be reduced on January 1 of each year for four consecutive years, with the first reduction occurring on January 1, 2013. The ETP's annual base support amount must be reduced by 25% of the additional revenue calculated in accordance with this paragraph in each year of the transition period. This reduction must be accomplished by reducing support for each wire center served by the ETP proportionally.

(4) **Portability**. The support amounts established in accordance with this section are applicable to all ETPs and are portable with the customer.

(5) **Limitation on availability of THCUSP support.**

(A) THCUSP support must not be provided in a wire center in a deregulated market that has a population of at least 30,000.

(B) An ILEC may receive support from the THCUSP for a wire center in a deregulated market that has a population of less than 30,000 only if the ILEC demonstrates to the commission that the ILEC needs the support to provide basic local telecommunications service at reasonable rates in the affected market. An ILEC may use evidence from outside the wire center at issue to make the demonstration. An ILEC may make the demonstration for a wire center before or after submitting a petition to deregulate the market in which the wire center is located.

(6) **Total Support Reduction Plan.** Within 10 days of the effective date of this section, an ILEC may elect to participate in a Total Support Reduction Plan (TSRP) as prescribed in this subsection, by filing a notification of such participation with the commission. The TSRP would serve as an alternative to the reduction plan prescribed in paragraph (3) of this subsection. The TSRP will be implemented as follows:

(A) For an ILEC making this election, the ILEC must reduce its THCUSP funding in accordance with paragraph (3) of this subsection with the exception that THCUSP reductions due to exchange deregulation may be credited against the electing ILEC's annual reduction obligation in the calendar year immediately following such deregulation.

(B) In no event will an electing ILEC seek or receive THCUSP funding after January 1, 2017 even if the electing ILEC would otherwise be entitled to such funding as of this date.

(f) **Support Reduction**. Subject to the provisions of §26.405(f)(3) of this title (relating to Financial Need for Continued Support), the commission will adjust the support to be made available from the THCUSP according to the following criteria.

(1) For each ILEC that is not electing under subsection (e)(6) of this section and that served greater than 31,000 access lines in this state on September 1, 2022, or a company or cooperative that is a successor to such an ILEC, the monthly per-line support that the ILEC is eligible to receive for each exchange on December 31, 2023 from the THCUSP is reduced:

(A) on January 1, 2024, to 75 percent of the level of support the ILEC was eligible to receive on December 31, 2023;

(B) on January 1, 2025, to 50 percent of the level of support the ILEC was eligible to receive on December 31, 2023;

(C) on January 1, 2026, to 25 percent of the level of support the ILEC was eligible to receive on December 31, 2023; and

(D) on January 1, 2027, to zero percent of the level of support the ILEC was eligible to receive on December 31, 2023.

(2) An ILEC subject to this subsection may file a petition to show financial need for continued support, in accordance with§26.405(f)(1) of this title, before January 1, 2027.

(g) **Reporting requirements**. An ETP that receives support in accordance with this section must report the following information:

(1) **Monthly reporting requirement.** An ETP must report the following to the TUSF administrator on a monthly basis:

(A) the total number of eligible lines for which the ETP seeks TUSF support; and

(B) a calculation of the base support computed in accordance with the requirements of subsection (d) of this section.

(2) **Quarterly filing requirements.** An ETP must file quarterly reports with the commission showing actual THCUSP receipts by study area.

(A) Reports must be filed electronically in the project number assigned by the commission's central records office no later than 3:00 p.m. on the 30th calendar day after the end of the calendar quarter reporting period.

(B) Each ETP's reports must be filed on an individual company basis; reports that aggregate the disbursements received by two or more ETPs will not be accepted as complying with the requirements of this paragraph.

(C) All reports filed in accordance with paragraph (3) of this subsection must be publicly available.

(3) **Annual reporting requirements.** An ETP must report annually to the TUSF administrator that it is qualified to participate in the THCUSP.

(4) **Other reporting requirements.** An ETP must report any other information that is required by the commission or the TUSF administrator, including any information necessary to assess contributions and disbursements from the TUSF.

§26.404. Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan.

(a) **Purpose.** This section establishes guidelines for financial assistance to eligible telecommunications providers (ETPs) that provide service in the study areas of small and rural ILECs in the state so that basic local telecommunications service or its equivalent may be provided at reasonable rates in a competitively neutral manner.

(b) **Application.**

(1) **Small or rural ILECs.** This section applies to small ILECs, as defined in subsection (c) of this section, and to rural ILECs, as defined in §26.5 of this title (relating to Definitions), that have been designated ETPs.

(2) **Other ETPs providing service in small or rural ILEC study areas.** This section applies to telecommunications providers other than small or rural ILECs that provide service in small or rural ILEC study areas that have been designated ETPs.

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

(1) **Business line** -- The telecommunications facilities providing the communications channel that serves a single-line business customer's service address. For the purpose of this definition, a single-line business line is one to which multi-line hunting, trunking, or other special capabilities do not apply. For a line served by an ILEC, a business line is a line served in accordance with the ILEC's business service tariff or a package that includes such a tariffed service. For a line served by an ILEC in accordance with a customer specific contract or that is otherwise not served in accordance with a tariff, to qualify as a business line, the service must be provided in accordance with a customer application, subscriber agreement, or contract entered into by a public or private organization of any character, or a representative or agent of such entity, irrespective of the person or entity in actual possession of the telephone device. For a line that is served by an ETP other than an ILEC, to qualify as a business line, the service must be provided in accordance with a customer application, subscriber agreement, or contract entered into by a public or private organization of any character, or a representative or agent of such entity, irrespective of the person or entity in actual possession of the telephone device.

(2) **Eligible line** -- A residential line or a single-line business line over which an ETP provides the service supported by the Small and Rural ILEC Universal Service Plan (SRILEC USP) through its own facilities, purchase of unbundled network elements (UNEs), or a combination of its own facilities and purchase of UNEs. An eligible line may be a business line or a residential line but cannot be both.

(3) **Eligible telecommunications provider (ETP)** -- A telecommunications provider designated by the commission in accordance with §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).

(4) **Physical 911 address --** For the purposes of this section, a physical 911 address is an address transmitted to the applicable emergency service providers by an ETP with respect to a line that is not stated in GPS coordinates.

(5) **Residential line** -- The telecommunications facilities providing the communications channel that serves a residential customer's service address. For the purpose of this definition, a residential line is one to which multi-line hunting, trunking, or other special capabilities do not apply. A line that qualifies as a business line does not qualify as a residential line.

(6) **Service Address** -- For the purposes of this section, a business or residential customer's service address is defined using the following criteria:

(A) A service address is the unique physical street address, including any suite or unit number, where a line is provided to a customer, except as provided in clauses (i)-(ii) and subparagraph (B) of this paragraph.

(i) If no unique physical street address is available, a physical 911 address must be used.

(ii) If no unique physical street address and no physical 911 address are available, the business or residential customer's service address must be an area of land under common operation or use as defined by a deed, state permit, lease name, or licensed or registered field of operation, which must be described by an ETP using GPS coordinates. Multiple buildings within a single area of land under common operation or use do not qualify as separate service addresses, even if the GPS coordinates for each building are different.

(B) For eligible lines served using commercial mobile radio service, a service address for such a line may be the customer's billing address for the purposes of this definition.

(7) **Small incumbent local exchange company** -- An incumbent local exchange (ILEC) that qualifies as a "small local exchange company" as defined in the Public Utility Regulatory Act (PURA), §53.304(a)(1).

(d) **Service to be supported by the SRILEC USP.** The SRILEC USP must support the provision by ETPs of basic local telecommunications service. as defined in §26.403(d) of this title (relating to Texas High Cost Universal Service Plan (THCUSP)) and is limited to those services carried on all residential lines and the first five single-line business lines at a business customer's service address for which a flat rate plan is an available option.

(e) **Criteria for determining amount of support under SRILEC USP.** The commission will determine the amount of per-line support to be made available to ETPs in each eligible study area in accordance with this section. The amount of support available to each ETP must be calculated using the small and rural ILEC ETP base support amount and applying the annual reductions as described in this subsection.

(1) **Determining base support amount available to ETPs.** The initial per-line monthly base support amount for a small or rural ILEC ETP must be the per-line monthly support amount for each small or rural ILEC ETP study area as specified in Docket Number 18516, annualized by using the small or rural ILEC ETP access

line count as of January 1, 2012. The initial per-line monthly base support amount must be reduced as described in paragraph (3) of this subsection.

(2) **Determination of the reasonable rate**.

(A) The reasonable rate for basic local telecommunications service must be determined by the commission in a contested case proceeding. An increase to an existing rate must not in any one year exceed an amount to be determined by the commission in the contested case proceeding**.**

(B) The length of the transition period applicable to the reduction in support calculated under paragraph (3) of this subsection must be determined in the contested case proceeding.

(3) **Annual reductions to the SRILEC USP**. As part of the contested case proceeding referenced in paragraph (2) of this subsection, for each small or rural ILEC ETP, the commission will calculate the amount of additional revenue, using the basic telecommunications service rate (the tariffed local service rate plus any additional charges for tone dialing services, mandatory expanded local calling service and mandatory extended area service) and the access line count as of September 1, 2013, would result if the small and rural ILEC ETP were to charge the reasonable rate for basic local telecommunications service to all residential customers. Without regard to whether a small or rural ILEC ETP increases its rates for basic local telecommunications service to the reasonable rate, the small or rural ILEC ETP's annual base support amount for each study area will be reduced on January 1 of each year for four consecutive years, with the first reduction occurring on January 1, 2014. The small or rural ILEC ETP's annual base support amount must be reduced by 25% of the additional revenue calculated in accordance with this paragraph in each year of the transition period, unless specified otherwise in accordance with paragraph (2)(B) of this subsection. This reduction must be accomplished by reducing support for each study area proportionally. An ILEC ETP may, in its sole discretion, accelerate its SRILEC USP reduction in any year by as much as 10% and offset such reductions with a corresponding local rate increase in order to produce rounded rates.

(f) **SRILEC USP support payments to ETPs.** The TUSF administrator must disburse monthly support payments to ETPs qualified to receive support in accordance with this section.

(1) **Payments to small or rural ILEC ETPs.** The payment to each small or rural ILEC ETP must be computed by multiplying the per-line amount established in subsection (e) of this section by the number of eligible lines served by the small or rural ILEC ETP for the month.

(2) **Payments to ETPs other than small or rural ILECs.** The payment to each ETP other than a small or rural ILEC must be computed by multiplying the per-line amount established in subsection (e) of this section for a given small or rural ILEC study area by the number of eligible lines served by the ETP in such study area for the month.

(g) **Support Reduction**. Subject to the provisions of §26.405(f)(3) of this title (relating to Financial Need for Continued Support), the commission will adjust the support to be made available from the SRILEC USP according to the following criteria.

(1) For each ILEC ETP that is electing under PURA, Chapter 58 or 59 or a cooperative that served greater than 31,000 access lines in this state on September 1, 2022, or a company or cooperative that is a successor to such an ILEC, the monthly per-line support that the ILEC ETP is eligible to receive for each exchange on December 31, 2024 from the SRILEC USP is reduced:

(A) on January 1, 2025, to 75 percent of the level of support the ILEC ETP is eligible to receive on December 31, 2024;

(B) on January 1, 2026, to 50 percent of the level of support the ILEC ETP is eligible to receive on December 31, 2024;

(C) on January 1, 2027, to 25 percent of the level of support the ILEC ETP is eligible to receive on December 31, 2024; or

(D) on January 1, 2028, to zero percent of the level of support the ILEC ETP is eligible to receive on December 31, 2024.

(2) An ILEC ETP subject to this subsection may file a petition to show financial need for continued support, in accordance with §26.405(f)(1) of this title, on or before January 1, 2028.

(h) **Reporting requirements.** An ETP eligible to receive support under this section must report information as required by the commission and the TUSF administrator.

(1) **Monthly reporting requirement.** An ETP must report the following to the TUSF administrator on a monthly basis:

(A) the total number of eligible lines for which the ETP seeks SRILEC USP support; and

(B) a calculation of the base support computed in accordance with the requirements of subsection (e) of this section.

(2) **Quarterly filing requirements.** An ETP must file quarterly reports with the commission showing actual SRILEC USP receipts by study area.

(A) Reports must be filed electronically in the project number assigned by the commission's central records office no later than 3:00 p.m. on the 30th calendar day after the end of the calendar quarter reporting period.

(B) Each ETP's reports must be filed on an individual company basis; reports that aggregate the disbursements received by two or more ETPs will not be accepted as complying with the requirements of this paragraph.

(C) All reports filed in accordance with paragraph (3) of this subsection must be publicly available.

(3) **Annual reporting requirements.** An ETP must report annually to the TUSF administrator that it is qualified to participate in the SRILEC USP.

(4) **Other reporting requirements.** An ETP must report any other information that is required by the commission or the TUSF administrator, including any information necessary to assess contributions and disbursements from the TUSF.

§26.405. Financial Need for Continued Support.

(a) **Purpose.** This section establishes criteria to demonstrate financial need for continued support for the provision of basic local telecommunications service under the Texas High Cost Universal Service Plan (THCUSP) and the Small and Rural Incumbent Local Exchange Company Universal Service Plan (SRILEC USP). This section also establishes the process by which the commission will evaluate petitions to show financial need and will set new monthly per-line support amounts.

(b) **Application.** This section applies to an incumbent local exchange company (ILEC) that is subject to §26.403(f) of this title (relating to the Texas High Cost Universal Service Plan (THCUSP)) or §26.404(g) of this title (relating to the Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan).

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

(1) **Business line** -- The telecommunications facilities providing the communications channel that serves a single-line business customer's service address. For the purpose of this definition, a single-line business line is one to which multi-line hunting, trunking, or other special capabilities do not apply. For a line served by an ILEC, a business line is a line served in accordance with the ILEC's business service tariff or a package that includes such a tariffed service. For a line served by an ILEC in accordance with a customer specific contract or that is otherwise not served in accordance with a tariff, to qualify as a business line, the service must be provided in accordance with a customer application, subscriber agreement, or contract entered into by a public or private organization of any character, or a representative or agent of such entity, irrespective of the person or entity in actual possession of the telephone device. For a line that is served by an ETP other than an ILEC, to qualify as a business line, the service must be provided in accordance with a customer application, subscriber agreement, or contract entered into by a public or private organization of any character, or a representative or agent of such entity, irrespective of the person or entity in actual possession of the telephone device.

(2) **Eligible line** -- A residential line or a single-line business line over which an ETP provides the service supported by the THCUSP or SRILEC USP through its own facilities, purchase of unbundled network elements (UNEs), or a combination of its own facilities and purchase of UNEs. An eligible line may be a business line or a residential line but cannot be both.

(3) **Eligible telecommunications provider (ETP)** -- A telecommunications provider designated by the commission in accordance with §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).

(4) **Physical 911 address --** For the purposes of this section, a physical 911 address is an address transmitted to the applicable emergency service providers by an ETP with respect to a line that is not stated in GPS coordinates.

(5) **Residential line** -- The telecommunications facilities providing the communications channel that serves a residential customer's service address. For the purpose of this definition, a residential line is one to which multi-line hunting, trunking, or other special capabilities do not apply. A line that qualifies as a business line does not qualify as a residential line.

(6) **Service Address** -- For the purposes of this section, a business or residential customer's service address is defined using the following criteria:

(A) A service address is the unique physical street address, including any suite or unit number, where a line is provided to a customer, except as provided in clauses (i)-(ii) and subparagraph (B) of this paragraph.

(i) If no unique physical street address is available, a physical 911 address must be used.

(ii) If no unique physical street address and no physical 911 address are available, the business or residential customer's service address must be an area of land under common operation or use as defined by a deed, state permit, lease name, or licensed or registered field of operation, which must be described by an ETP using GPS coordinates. Multiple buildings within a single area of land under common operation or use must not qualify as separate service addresses, even if the GPS coordinates for each building are different.

(B) For eligible lines served using commercial mobile radio service, a service address for such a line may be the customer's billing address for the purposes of this definition.

(d) **Determination of financial need.**

(1) **Criteria to determine financial need**. For each exchange that is served by an ILEC ETP filing a petition in accordance with subsection (f)(1) of this section, the commission will determine whether an ILEC ETP has a financial need for continued support. An ILEC ETP has a financial need for continued support within an exchange if the exchange does not contain an unsubsidized wireline voice provider competitor as set forth in paragraph (2) of this subsection.

(2) **Establishing the existence of an unsubsidized wireline voice provider competitor.** For the purposes of this section, an exchange contains an unsubsidized wireline voice provider competitor if the percentage of square miles served by an unsubsidized wireline voice provider competitor exceeds 75% of the square miles within the exchange. The commission will determine whether an exchange contains an unsubsidized wireline voice provider competitor using the following criteria.

(A) For the purposes of this section, an entity is an unsubsidized wireline voice provider competitor within an exchange if it:

(i) does not receive THCUSP support, SRILEC USP support, Federal Communications Commission (FCC) Connect America Fund (CAF) support or successor federal programs, or FCC Legacy High Cost support for service provided within that exchange; and

(ii) offers basic local service or broadband service of 3 megabits per second down and 768 kilobits per second up using wireline-based technology using either its own facilities or a combination of its own facilities and purchased unbundled network elements (UNEs).

(B) Using the current version of the National Broadband Map in effect for at least 90 days, the commission will determine the census blocks served by an unsubsidized wireline voice provider competitor within a specific exchange and the total number of square miles represented by those census blocks using the following criteria.

(i) The number of square miles served by an unsubsidized wireline voice provider competitor within an exchange must be equal to the total square mileage covered by census blocks in the exchange in which an unsubsidized wireline voice provider competitor offers service to any customer or customers.

(ii) The commission will determine the percentage of square miles served by an unsubsidized wireline voice provider competitor within an exchange by dividing the number of square miles served by an unsubsidized wireline voice provider competitor within the exchange by the number of square miles within the exchange.

(C) The data provided by the FCC's Broadband Data Collection creates a rebuttable presumption regarding the presence of an unsubsidized wireline voice provider competitor within a specific census block. However, nothing in this rule is intended to preclude a party from providing evidence as to the accuracy of individual census block data within the FCC's Broadband Data Collection with regard to whether an unsubsidized wireline voice provider competitor offers service within a particular census block.

(3) **Periodic review of criteria to demonstrate financial need for continued support.** Beginning September 1, 2024, and every four years thereafter, the commission will review and may adjust the standards and criteria to demonstrate financial need for continued support under this subsection.

(e) **Criteria for determining amount of continued support**. In a proceeding conducted in accordance with subsection (f) of this section, the commission will set new monthly per-line support amounts for each exchange served by a petitioning ILEC ETP. The new monthly per-line support amounts must be effective beginning with the first disbursement following a commission order entered in accordance with subsection (f)(2) of this section, except that the new amounts must not be effective earlier than January 1, 2024 for an exchange with service supported by the THCUSP or earlier than January 1, 2025 for an exchange with service supported by the SRILEC USP.

(1) Exchanges in which the ILEC ETP does not have a financial need for continued support.

(A) For each exchange that is served by an ILEC ETP that has filed a petition in accordance with subsection (f)(1) of this section and for which the commission has not determined that the ILEC ETP has a financial need for continued support, the commission will reduce the monthly per-line support amount to zero.

(B) For each exchange that is served by an ILEC ETP that has filed a petition in accordance with subsection (f)(1) of this section and which is not included in the petition, the commission will reduce the monthly per-line support amount to zero.

(2) **Exchanges in which the ILEC ETP has a financial need for continued support.** For each exchange that is served by an ILEC ETP that has filed a petition in accordance with subsection (f)(1) of this section and for which the commission has determined the ILEC ETP has a financial need for continued support, the commission will set a monthly per-line support amount according to the following criteria.

(A) The initial monthly per-line support amounts for each exchange must be equal to:

(i) the amount that the ILEC ETP was eligible to receive on December 31, 2023 for an ILEC ETP that receives support from the THCUSP;

(ii) the amount that the ILEC ETP was eligible to receive on December 31, 2024 for an ILEC ETP that receives support from the SRILEC USP and that has not filed a request in accordance with subsection (g) of this section; or

(iii) the new monthly per-line support amounts calculated in accordance with subsection (g) of this section for an ILEC ETP that has filed a request in accordance with subsection (g) of this section.

(B) Initial monthly per-line support amounts for each exchange must be reduced by the extent to which the disbursements received by an ILEC ETP from the THCUSP or SRILEC USP in the twelve month period ending with the most recently completed calendar quarter prior to the filing of a petition in accordance with subsection (f)(1) of this section are greater than 80% of the total amount of expenses reflected in the summary of expenses filed in accordance with subsection (f)(1)(C) of this section. In establishing any reductions to the initial monthly per-line support amounts, the commission may consider any appropriate factor, including the residential line density per square mile of any affected exchanges.

(C) For each exchange with service supported by the THCUSP, monthly per-line support must not exceed:

(i) the monthly per-line support that the ILEC ETP is eligible to receive on December 31, 2023, if the petition is filed before January 1, 2024;

(ii) 75 percent of the monthly per-line support that the ILEC ETP is eligible to receive on December 31, 2023, if the petition is filed on or after January 1, 2024, and before January 1, 2025;

(iii) 50 percent of the monthly per-line support the ILEC ETP is eligible to receive on December 31, 2023, if the petition is filed on or after January 1, 2025, and before January 1, 2026;

(iv) 25 percent of the monthly per-line support that the ILEC ETP is eligible to receive on December 31, 2023, if the petition is filed on or after January 1, 2026, and before January 1, 2027; or

(v) zero percent of the monthly per-line support that the ILEC ETP is eligible to receive on December 31, 2023, if the petition is filed on or after January 1, 2027, and before January 1, 2028.

(D) For each exchange with service supported by the SRILEC USP, monthly per-line support must not exceed:

(i) the monthly per-line support that the ILEC ETP is eligible to receive on December 31, 2024, if the petition is filed before January 1, 2025;

(ii) 75 percent of the monthly per-line support that the ILEC ETP is eligible to receive on December 31, 2024, if the petition is filed on or after January 1, 2025, and before January 1, 2026;

(iii) 50 percent of the monthly per-line support the ILEC ETP is eligible to receive on December 31, 2024, if the petition is filed on or after January 1, 2026, and before January 1, 2027;

(iv) 25 percent of the monthly per-line support that the ILEC ETP is eligible to receive on December 31, 2024, if the petition is filed on or after January 1, 2027, and before January 1, 2028; or

(v) zero percent of the monthly per-line support that the ILEC ETP is eligible to receive on December 31, 2023, if the petition is filed on or after January 1, 2028, and before January 1, 2029.

(E) An ILEC ETP may only be awarded continued support for the provision of service in exchanges with service that is eligible for support from the THCUSP or SRILEC USP at the time of filing of a petition in accordance with subsection (f)(1) of this section.

(F) **Portability of support.** The support amounts established in accordance with this section are applicable to all ETPs and are portable with the customer.

(f) **Proceeding to Determine Financial Need and Amount of Support.**

(1) **Petition to determine financial need.** An ILEC ETP that is subject to §26.403(f) or §26.404(g) of this title may petition the commission to initiate a contested case proceeding to demonstrate that it has a financial need for continued support for the provision of basic local telecommunications service.

(A) An ILEC ETP that is subject to either §26.403(f) or §26.404(g) of this title may only file one petition in accordance with this subsection. A petition filed in accordance with this subsection must include the information necessary to reach the determinations specified in this subsection.

(B) An ILEC ETP filing a petition in accordance with this subsection must provide notice as required by the presiding officer in accordance with §22.55 of this title (relating to Notice in Other Proceedings). At a minimum, notice must be published in the *Texas Register*.

(C) A petition filed in accordance with this subsection must include a summary of the following total Texas regulated expenses and property categories, including supporting workpapers, attributable to the ILEC ETP's exchanges with service supported by the THCUSP or SRILEC USP during the twelve month period ending with the most recently completed calendar quarter prior to the filing of the petition:

(i) Plant-specific operations expense;
(ii) Plant non-specific operations expense;
(iii) Customer operations expense;
(iv) Corporate operations expense;
(v) Depreciation and amortization expenses;
(vi) Other operating expenses;
(vii) Total telecom plant in service;
(viii) Total property held for future use; and
(ix) Total telecom plant under construction.

(D) A summary filed in accordance with this subsection must be filed publicly. Workpapers filed in accordance with this subsection may be filed publicly or confidentially.

(E) Upon receipt of a petition in accordance with this section, the commission will initiate a contested case proceeding to determine whether the ILEC ETP has a financial need for continued support under this section for the exchanges identified in the petition. In the same proceeding, the commission will set a new monthly per-line support amount for all exchanges served by the ILEC ETP.

(2) **Issuance of final order on petition.** The commission will issue a final order in the proceeding not later than the 330th day after the date the petition is filed with the commission. Until the commission issues a final order on the proceeding, the ILEC ETP must continue to receive the total amount of support it was eligible to receive on the date the ILEC ETP filed a petition under this subsection.

(3) **Effect of final order.** An ILEC ETP is not subject to §26.403(f) or §26.404(g) of this title after the commission issues a final order on the petition.

(4) **Burden of proof.** The ILEC ETP filing a petition in accordance with this subsection must bear the burden of proof with respect to all issues that are in the scope of the proceeding.

(g) **De-averaging of the support received by ILEC ETPs from the SRILEC USP.** On or before January 1, 2017, an ILEC ETP filing a petition in accordance with subsection (f)(1) of this section and that receives support from the SRILEC USP may include in its petition a request that the commission determine for each exchange served by the ILEC ETP new monthly per-line support amounts that the ILEC ETP will be eligible to receive on December 31, 2017. The new monthly per-line support amounts will be calculated using the following methodology.

(1) The commission will use per-line proxy support levels based on the following ranges of average residential line density per square mile within an individual exchange. These proxies are used specifically for the purpose of de-averaging and do not indicate a preference that support at these levels be provided from the SRILEC USP.

Residential Line Density Per Square Mile	Proxy Per-Line Support Amount
0 to 2.49	$120.53
2.49 to 4.99	$69.82
5 to 9.99	$46.46

10 to 14.99	$31.45
15 to 19.99	$18.81
20 to 24.99	$14.78
25 to 29.99	$10.51
30 to 49.99	$4.33
50 or greater	$1.83

(2) Using the per-line proxy support amount levels set forth in this subsection, the commission will create a benchmark support amount for each exchange of a requesting ILEC ETP. The benchmark support amount for each individual supported exchange of a company or cooperative is calculated by multiplying the number of total eligible lines as of December 31, 2016 served by the ILEC ETP within each exchange by the corresponding proxy support amount for that individual exchange based on the average residential line density per square mile of the exchange as of December 31, 2016.

(3) To the extent that the total sum of the benchmark support amounts for all of the supported exchanges of a company or cooperative is greater than or less than the targeted total support amount a company or cooperative would be eligible to receive on December 31, 2017 as a result of the final order in Docket No. 41097, the benchmark per-line support amount for each exchange must be proportionally reduced or increased by the same percentage amount so that the total support amount a company or cooperative is eligible to receive on December 31, 2017, as a result of the final order in Docket No. 41097, is unaffected by the de-averaging process.

(4) The per-line support amount that a company or cooperative is eligible to receive in a specific exchange on December 31, 2017, for purposes of a petition filed in accordance with subsection (f)(1) of this section, is the per-line support amount for each exchange determined through the de-averaging process set forth in this subsection.

(h) **Reporting requirements.** An ILEC ETP that receives support in accordance with this section is subject to the reporting requirements prescribed by §26.403(g) or §26.404(h) of this title.

(i) **Additional Financial Assistance.** Nothing in this section prohibits an ILEC or a cooperative that is not an electing company under Chapter 58, 59, or 65 of PURA to apply for Additional Financial Assistance in accordance with §26.408 of this title (relating to Additional Financial Assistance (AFA)).

(j) **Service to be supported.** The services to be supported in accordance with the section are subject to the same definitions and limitations as those prescribed by §26.403(d) and §26.404(d) of this title, in addition to any limitation ordered by the commission in a contested case proceeding.

(k) **Expiration of support to an ILEC ETP.** On December 31, 2024, support to an ILEC ETP or cooperative must be reduced to zero percent of the amount of support that the company is eligible to receive on that date if the following conditions are met:

(1) The support to the ILEC ETP or cooperative has been reduced to 25 percent of the amount of support the ILEC ETP or cooperative was eligible to receive before December 31, 2022; and

(2) The ILEC ETP or cooperative has not submitted a petition under subsection (f)(1) of this section.

(l) **Relinquishment of support.** An ETP may file a notice with the commission of the ETP's relinquishment of the support it is entitled to receive under this subchapter.

(1) After notice by the provider, the commission will notify the TUSF administrator of the relinquishment and require the TUSF administrator to terminate support to the provider.

(2) If the commission does not notify the TUSF administrator before 90 days of the date the ETP filed the notice with the commission, the ETP may stop receiving support 90 days from the date the ETP filed notice with the commission.

§26.407. Small and Rural Incumbent Local Exchange Company Universal Service Plan Support Adjustments

(a) **Purpose.** This section establishes criteria for a small incumbent local exchange company (small ILEC) to request adjustments to the monthly support the company receives in accordance with §26.404 of this title (relating to the Small and Rural Incumbent Local Exchange Company Universal Service Plan).

(b) **Application.** This section applies to a small ILEC that has been designated as an eligible telecommunications provider (ETP) by the commission in accordance with §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).

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

(1) **Eligible telecommunications provider (ETP) --** A telecommunications provider designated by the commission in accordance with §26.417 of this title.

(2) **Federal Communications Commission (FCC) Rate of Return --** The FCC's most recently prescribed rate of return as of the date of any determination, review, or adjustment under this section, to be no greater than 9.75 percent prior to July 1, 2021. If the FCC no longer prescribes such a rate of return, commission staff will initiate proceedings as necessary for the commission to determine or modify the FCC rate of return to be used for purposes of this section.

(3) **Reasonable Rate of Return --** An intrastate rate of return within two percentage points above or three percentage points below the FCC rate of return.

(4) **Small incumbent local exchange company (small ILEC) --** For purposes of this section, a small ILEC is a small provider as defined by PURA §56.032(a)(2).

(d) **Notification to the commission that a small ILEC seeks to participate in this section.** A small ILEC that is not an electing company under Chapters 58 or 59 may file a written notice to the commission to participate in this section to have the commission determine the amount of Small and Rural Incumbent Local Exchange Company Universal Service Plan support it receives, so that such support, combined with regulated revenues, provides the small ILEC an opportunity to earn a reasonable rate of return if the reported rate of return of such small ILEC is based on expenses that it believes are reasonable and necessary. When adjusting monthly support, the commission will consider, among other factors described in this section, the adequacy of basic rates to support universal service. A small ILEC that submits a written notice to participate in this section will continue to receive the same level of Small and Rural Incumbent Local Exchange Company Universal Service Plan support it was receiving on the date of the written notice until the commission makes a determination or adjustment under this section.

(e) **Annual report of a requesting small ILEC.**

(1) **Deadlines for annual reports.** A small ILEC that submits a written notice under subsection (d) of this section must file an annual report each year with the commission, using the form prescribed by the commission that is available on the commission's website. The initial annual report for a small ILEC that files a written

notice under subsection (d) of this section must be filed within two months after a small ILEC elects to participate in this section. Subsequent annual reports must be filed no later than September 15 of each year. All annual reports must be related to the most recent calendar year prior to the filing of the annual report.

(2) **Contents of annual report.** The annual report filed by a small ILEC under this subsection must include information on the following:

(A) summary of revenues and expenses;
(B) all revenue, expense, and capital accounts;
(C) invested capital;
(D) intrastate federal income taxes calculated at the applicable tax rate;
(E) network access service revenue;
(F) weighted average cost of capital (for investor-owned utilities);
(G) historical financial statistics;
(H) proposed company adjustments;
(I) the name, job title, and total annual compensation of each officer, director, and, for investor-owned companies, owners and former owners (including each general manager and any other highly compensated employee that may not be designated as an officer of the company), and the name and compensation of each family member of officers, directors, owners, and former owners employed by the small ILEC;
(J) the amount and nature of each affiliate transaction, including transactions with family members of officers, directors, and, for an investor-owned company, owners and former owners;
(K) all detail and supporting documentation necessary to support each of the items in subsection (e)(2); and
(L) an authorized official's signature.

(3) **Cost allocation manual.** The small ILEC must provide its full and complete cost allocation manual as part of the annual report specified by paragraph (2) of this subsection.

(4) **Operational information.** By September 15, 2024, and on an annual basis thereafter, a small ILEC must file with the commission the following information regarding the provider's operations that are regulated by the commission:

(A) total operating revenues;
(B) total operating expenses;
(C) total operating tax expense;
(D) rate of return;
(E) total invested capital; and
(F) network access revenue.

(5) The operational information specified by paragraph (4) of this subsection must be filed as part of a small ILEC's annual report specified by paragraph (2) of this subsection.

(A) A copy of the operational information specified by paragraph (4) of this subsection must be filed publicly with the commission. The public filing is prohibited from being filed confidentially in accordance with PURA §56.032(k).

(B) A small ILEC must provide reconciled information to the extent the operational information specified by paragraph (4) of this subsection is deficient or, where applicable, does not match the information provided in a small ILEC's annual report.

(C) To the extent that commission staff determines the operational information is deficient, the small ILEC must provide the reconciled information to the commission in a public filing prior to the deadline prescribed by the presiding officer.

(f) **Commission staff's review of annual reports.** An annual report submitted under this section will be reviewed by commission staff to determine whether a small ILEC's support, when combined with regulated revenues, provide the small ILEC an opportunity to earn a reasonable rate of return and whether the reported rate of return of the small ILEC is based on expenses that the commission staff determines are reasonable and necessary.

(1) **Timeline for review of the annual reports.**

(A) During the review of an annual report, commission staff may submit requests for information to the small ILEC. Responses to such requests for information will be provided to the commission staff within ten days after receipt of the request by the small ILEC. If a small ILEC fails to timely provide information to commission staff, the small ILEC will be considered to be a Category 3 provider.

(B) Within 90 days after an annual report has been filed, commission staff will complete its review of the annual report and file a memorandum for the commission's consideration regarding a final recommendation on the reported or commission staff adjusted rate of return.

(2) **Commission staff's review of an annual report.**

(A) Commission staff will review and may make adjustments to information contained in the small ILEC's annual report, such as:

(i) expenses that are not reasonable or necessary;

(ii) expenses listed under §26.201(c)(2) of this title (relating to Cost of Service);

(iii) expenses that are not in compliance with FCC rules;

(iv) inappropriate affiliate transactions;

(v) inappropriate cost allocations;

(vi) inappropriate allocation of federal universal service support; and

(vii) any other adjustments that commission staff may find appropriate.

(B) Commission staff will recalculate the small ILEC's reported rate of return and provide an adjusted rate of return if any adjustments were made in paragraph (2)(A) of this subsection.

(3) **Separation of small ILECs into rate of return categories.** Upon completion of commission staff's review of a small ILEC's annual report, commission staff will determine the appropriate category for the small ILEC within the following three categories based on the small ILEC's reported or commission staff adjusted rate of return:

(A) Category 1. A rate of return of more than three percentage points below the FCC rate of return;

(B) Category 2. A rate of return within two percentage points above or three percentage points below the FCC rate of return; and

(C) Category 3. A rate of return of more than two percentage points above the FCC rate of return.

(4) Commission staff will file a memorandum for the commission's consideration of the categorization of each small ILEC in accordance with paragraph (1)(B) of this subsection.

(g) **Treatment of small ILECs based on rate of return categories.** Each category of ILEC will be processed as set forth below.

(1) **Category 1 -** A small ILEC that has a reported or commission staff adjusted rate of return in Category 1 may file an application for an adjustment to have its annual Small and Rural Incumbent Local Exchange Company Universal Service Plan support or basic rates increased to a level that would allow the small ILEC to earn an amount that would be considered a reasonable rate of return, except that the adjustment may not set a small ILEC's support level at more than 140 percent of the annualized support the provider received in the 12-month period before the date of the adjustment. Any rate adjustments may not adversely affect universal service.

(2) **Category 2 -** A small ILEC that has a reported or commission staff adjusted rate of return in Category 2 will be considered to be earning a reasonable rate of return and will not be eligible to file for an adjustment to its Small and Rural Incumbent Local Exchange Company Universal Service Plan support, except as described in subsection (h)(2)(B) of this section. The commission may not initiate a proceeding against a small ILEC that has a reported or commission staff adjusted rate of return within Category 2.

(3) **Category 3 -** For a small ILEC that has a reported or commission staff adjusted rate of return in Category 3, the commission staff may initiate a proceeding to review and adjust the small ILEC's Small and Rural Incumbent Local Exchange Company Universal Service Plan support or basic rates to adjust the small ILEC's rate of return into the reasonable rate of return range. A small ILEC that has a commission staff adjusted rate of return in Category 3 is not eligible to file for an adjustment to its Small and Rural Incumbent Local Exchange Company Universal Service Plan support, except as described in subsection (h)(2)(B) of this section.

(h) **Contested case procedures.**

(1) **Documents to be submitted**. At a minimum, the following information must be provided by a small ILEC in a contested case proceeding, regardless of whether such case is initiated by a small ILEC or commission staff. Any proceeding filed under this section in which a party has intervened and requested a hearing is a case initiated by a small ILEC or commission staff and the filing requirements listed below apply to such cases.

(A) all the data required by subsections (e) and (f) of this section;

(B) responses to commission staff's requests for information in connection with the review of each small ILEC's annual report;

(C) the requested Small and Rural Incumbent Local Exchange Company Universal Service Plan support or rate adjustments; and,

(D) testimony and workpapers necessary to support the requested adjustments.

(2) **Qualification for contested case proceeding.**

(A) **Category 1 small ILECs.** A small ILEC in Category 1, as identified in subsection (f)(3) of this section, may file an application that is eligible for administrative review or informal disposition to request an adjustment to its Small and Rural Incumbent Local Exchange Company Universal Service Plan or basic rates to allow the company to earn a reasonable rate of return.

(B) **Category 2 or Category 3 small ILECs subsequent to rate of return adjustment by commission staff**. A small ILEC that has a reported rate of return in Category 1 or Category 2, as identified in subsection (f)(3) of this section, but that has a commission staff adjusted rate of return in Category 2 or Category 3, may file a petition to contest the commission staff adjusted rate of return and may also request an adjustment to its Small and Rural Incumbent Local Exchange Company Universal Service Plan support or basic rates in the same proceeding. A small ILEC that has a reported rate of return in Category 2 but because of commission staff adjustments the small ILEC is in Category 3, may file a petition to contest the commission staff adjustments. However, the small ILEC may not request an adjustment to its Small and Rural Incumbent Local Exchange Company Universal Service Plan support or basic rates. Any proceeding that is initiated by a small ILEC to protest a reclassification and in which a party has intervened and requested a hearing is a case initiated by a small ILEC and the filing requirements listed below apply to these cases.

(C) **Category 3 small ILECs**. A small ILEC in Category 3, as identified in subsection (f)(3) of this section, is subject to a commission staff initiated proceeding to review the company's annual report and reported rate of return, must submit the information listed in paragraph (1) of this subsection.

(3) **Notice.** Each small ILEC that files a contested case proceeding will provide notice as required by §22.55 of this title (relating to Notice in Other Proceedings). At a minimum, notice will be published in the *Texas Register* and will be provided to the Office of Public Utility Counsel. Each Category 1 small ILEC that files an application under this section must provide notice to its customers that the company may be required to increase its rates as part of the adjustment to have its annual Small and Rural Incumbent Local Exchange Company Universal Service Plan support increased.

(4) **Burden of proof**. A small ILEC will bear the initial burden of production and the burden of persuasion.

(5) **Timing for contested cases.** The commission will grant or deny an application filed under subsection not later than 120 days after the date a sufficient application is filed. The commission may extend the deadline upon a showing of good cause. The application will be processed in accordance with the commission's rules applicable to docketed cases.

(6) **Timing to file a subsequent contested case.** Once the commission issues an order in a contested case under this section, the small ILEC and commission staff may not file a subsequent contested case before the third anniversary of the date on

which the small ILEC's most recent application for adjustment is initiated, unless good cause is proven.

(i) **Confidentiality of information.**

(1) A report or information that a small ILEC is required to provide to the commission under subsection (e) of this section is confidential and not subject to disclosure under Chapter 552, Government Code.

(2) A third party may only access confidential information filed according to subsection (h) of this section, or a proceeding related to that filing, if the third party is subject to an appropriate protective order.

(3) This subsection does not apply to a subsequent contested case initiated under subsection (h) of this section, and no claim of confidentiality will arise from this subsection in such a subsequent contested case.

(j) **Commission adjustment of the small ILEC's revenue requirement and Small and Rural Incumbent Local Exchange Company Universal Service Plan support.**

(1) **Revised revenue requirements.**

(A) In a proceeding conducted in accordance with subsection (h) of this section, the commission will determine the small ILEC's new revenue requirement necessary to allow the company to earn a reasonable rate of return; however, the commission may not set a small ILEC's support level at more than 140 percent of the annualized support the small ILEC received in the 12-month period before the date of the adjustment, nor may the rate adjustment adversely affect universal service.

(B) A small ILEC that is in Category 1 cannot request an increase in the Small and Rural Incumbent Local Exchange Company Universal Service Plan support that would result in a rate of return greater than the minimum of the reasonable rate of return. In a proceeding for a small ILEC in Category 3, a small ILEC or commission staff may not request a decrease in the Small and Rural Incumbent Local Exchange Company Universal Service Plan support that would result in a rate of return greater than the maximum reasonable rate of return.

(2) **Small and Rural Incumbent Local Exchange Company Universal Service Plan (SRIUSP) support payments to small ILECs.** The commission will determine the amount of adjustment to the annual SRIUSP support or basic rates for the small ILEC that will be needed to meet the new revenue requirement identified in this paragraph. The commission will determine the fixed monthly support payment for a small ILEC by dividing the SRIUSP support by 12. Each small ILEC that has SRIUSP support adjusted under this section must provide the TUSF administrator with a copy of the final order indicating the adjusted amount of SRIUSP support.

(k) **Miscellaneous items.**

(1) **Federal Universal Service Fund (FUSF) support.** The amount of annual FUSF support received by the small ILEC that is considered to be an intrastate expense adjustment under Part 36 and Part 54 of the FCC's rules or by FCC order, regardless of the category of FUSF support, will offset the total intrastate expenses and be

reflected as such in the small ILEC's annual report. The timing of any FUSF support will be considered when making a determination under subsection (j) of this section.

(2) **Recovery of FUSF support from the TUSF in accordance with PURA §56.025.** The amount of FUSF support recovered from the TUSF in accordance with PURA §56.025 that is considered an intrastate expense adjustment under Part 36 and Part 54 of the FCC rules or by FCC order, regardless of the category of FUSF support or type of budget control mechanism placed on FUSF support, will be shown as an offset to the total intrastate expenses in the small ILEC's annual report. The timing of any recovery of FUSF support from the TUSF in accordance with PURA §56.025 and the timing of any true-ups must be considered when making a determination under subsection (j) of this section.

(3) **Commission authority.** Nothing in this section prohibits the commission from conducting a review in accordance with PURA, Chapter 53, Subchapter D.

(l) **Treatment of federal income tax expense.**

(1) **Accumulated deferred federal income taxes (ADFIT).**

(A) For a small ILEC investor-owned utility (IOU) subject to federal income tax, the IOU must record on its books a regulatory liability for amounts of excess ADFIT resulting from the Tax Cuts and Jobs Act of 2017 (TCJA), in accordance with the commission's order in Project No. 47945. An IOU must include this information on the annual report required by this rule. For the purposes of this section, excess ADFIT is defined as the difference between the amount of ADFIT on the IOU's books after incorporating changes from the TCJA and the amount of ADFIT that would have been on the IOU's books had the tax changes in the TCJA not occurred.

(B) IOUs will either amortize the excess ADFIT regulatory liability over a period not to exceed five years or allow it to reverse along with the associated ADFIT according to the transaction that resulted in the ADFIT.

(2) **Current federal income tax expense.**

(A) For an IOU subject to federal income tax, the IOU must record on its books a regulatory liability for amounts of excess current federal income taxes resulting from the TCJA, in accordance with the commission's order in Project No. 47945. An IOU must include this information on the annual report required by this section. For purposes of this section, excess current federal income tax expense is defined as the difference between the amount of revenue collected under current rates related to current federal income tax expense and the amount of revenue related to current federal income tax expense that should have been collected under rates reflecting changes in the TCJA. An acceptable alternative calculation of an appropriate regulatory liability for purposes of this rule is the difference in the current period federal income tax expense calculated under the TCJA and the amount that would have been calculated under the federal tax code immediately preceding the TCJA.

(B) At such time that commission staff files a memorandum for the commission to categorize the IOUs' rate of return for 2017, the IOUs will no longer

accrue on the books the regulatory liability for excess current federal income tax expense.

(C) An IOU will amortize the regulatory liability for the excess current federal income tax expense over a period not to exceed five years.

(D) An IOU will supplement its 2017 reported financial information to reflect the amount of current federal income tax expense for 2017 calculated as if the terms of the TCJA had applied to 2017 operations to calculate potential support from the Small and Rural Incumbent Local Exchange Company Universal Service Plan. The IOU will report this information as a proposed adjustment.

(3) This subsection will expire on December 31, 2019. Any amortization of a regulatory liability resulting from application of this subsection would continue until completed.

§26.409. Review of Texas Universal Service Fund Support Received by Competitive Eligible Telecommunications Providers.

(a) **Purpose.** This section implements PURA §56.023(p) and (r) and establishes the criteria and process for determining whether Texas Universal Service Fund (TUSF) support under §26.403 of this title (relating to Texas High Cost Universal Service Plan (THCUSP)) to a competitive Eligible Telecommunications Provider (ETP) should be eliminated.

(b) **Application.** This section applies to exchanges in which an incumbent local exchange company or cooperative is ineligible for support under PURA §56.021(1) and a competitive ETP receives TUSF support under §26.403 of this title. This section expires on December 31, 2023.

(c) **Commission review**.

(1) The commission must review the per-line TUSF support amount for each exchange identified by subparagraph (d)(1)(B) of this section to determine whether support should be eliminated. The first review of an exchange must be completed not later than the end of the year following the year in which the exchange was reported under subparagraph (d)(1)(B) of this section.

(2) The commission must base its decision on the following criteria:

(A) The total number of access lines in the exchange served by competitive ETPs receiving TUSF support;

(B) The number of competitors providing comparable service in the exchange; and

(C) Whether continuing the TUSF support is in the public interest.

(d) **Identification of exchanges for review.**

(1) No later than April 30 of each year, commission staff must report:

(A) Each exchange in which the number of access lines served by competitive ETPs has decreased by at least 50% from the number of access lines that were served in that exchange by competitive ETPs on December 31, 2016; and

(B) The number of access lines served by those competitive ETPs identified in subparagraph (A) of this paragraph on December 31 of the prior calendar year.

(2) Commission staff must file its report in central records under a control number designated for that purpose.

(e) **Initiation of proceeding.** For each exchange identified under subparagraph (d)(1)(B) of this section, commission staff will file an application to initiate a proceeding to review the per-line TUSF support amount for that exchange.

(1) The application must be supported by an affidavit and describe commission staff's determination that the number of access lines served by competitive ETPs in the exchange decreased by at least 50% compared to the number of access lines served by competitive ETPs in that exchange on December 31, 2016.

(2) Commission staff must serve a copy of the application, at the time of filing, to the competitive ETPs receiving TUSF support in the exchange by email, regular mail, and certified mail.

(f) **Competitive ETP's response to commission staff's application.**

(1) A competitive ETP serving access lines in an exchange identified under subparagraph (d)(1)(B) may respond to commission staff's application no later than 30 days after the application is filed.

(2) A competitive ETP's response must address the criteria listed in subsection (c) of this section.

(3) The response must be in writing, supported by affidavit, and filed with the commission as prescribed by 16 TAC §22.71 of this title (relating to Filing of Pleadings, Documents, and Other Materials).

(g) **Commission staff's recommendation.** In accordance with the schedule established by the presiding officer, but no earlier than 40 days after filing the application described in subsection (e), commission staff will file a recommendation, supported by affidavit, on whether the commission should eliminate TUSF support in the identified exchange. In its recommendation, commission staff must address the criteria listed in subsection (c).

(h) **Competitive ETP's response to commission staff's recommendation.** No later than 20 days after commission staff files its recommendation, a competitive ETP may file a response to commission staff's recommendation. The response must state whether the competitive ETP agrees or disagrees with commission staff's recommendation and may include a request for a hearing.

(i) **Commission determination**.

(1) If a competitive ETP does not request a hearing within the time prescribed by subsection (h), the commission will determine whether to eliminate TUSF support for the exchange based on the filings submitted by commission staff and the competitive ETPs.

(2) If a competitive ETP requests a hearing, the proceeding will be conducted as a contested case.

(j) **Further review.** If the commission does not eliminate TUSF support for an exchange after a review conducted under subsections (c) – (i) of this section, the commission must repeat the review of the TUSF per-line support amount for that exchange at least every three years.

§26.414. Telecommunications Relay Service (TRS).

(a) **Purpose.** The provisions of this section are intended to establish a statewide telecommunications relay service for individuals who are hearing-impaired or speech-impaired using specialized telecommunications devices and operator translations. Telecommunications relay service must be provided on a statewide basis by one telecommunications carrier, except that the commission may contract with another vendor for a special feature in certain circumstances. Certain aspects of telecommunications relay service operations are applicable to local exchange companies and other telecommunications providers.

(b) **Provision of TRS.** TRS must provide individuals who are hearing-impaired or speech-impaired with access to the telecommunications network in Texas equal to that provided to other customers.

(1) **Components of TRS.** TRS must meet the mandatory minimum standards defined in §26.5 of this title (relating to Definitions) and must include the following:

(A) switching and transmission of the call;

(B) oral and print translations by either live or automated means between individuals who are hearing-impaired or speech-impaired who use specialized telecommunications devices and others who do not have such devices;

(C) sufficient operators and facilities to meet the grade and quality of service standards established by the commission for TRS, including the operator answering performance standards listed in §26.54(c)(2)(A) and (D) of this title (relating to Service Objectives and Performance Benchmarks).

(D) appropriate procedures for handling emergency calls;

(E) confidentiality regarding existence and content of conversations;

(F) the capability of providing sufficient information to allow calls to be accurately billed;

(G) the capability of providing for technologies such as hearing carryover or voice carryover;

(H) operator training to relay the contents of the call as accurately as possible without intervening in the communications;

(I) operator training in American Sign Language and familiarity with the special communications needs of individuals who are hearing-impaired or speech-impaired;

(J) the capability for callers to place calls through TRS from locations other than their primary location and to utilize alternate billing arrangements;

(K) the capability of providing both inbound and outbound intrastate and interstate service;

(L) the capability for carrier of choice; and

(M) other service enhancements approved by the commission.

(2) **Conditions for interstate service.** The TRS carrier must not be reimbursed from the Texas Universal Service Fund (TUSF) for the cost of providing interstate TRS. Interstate TRS must be funded through the interstate jurisdiction as mandated by

the Federal Communications Commission. Separate funds and records must be maintained by the TRS carrier for intrastate TRS and interstate TRS.

(3) **Rates and charges.** The following rates and charges apply to TRS:

(A) Local calls. The calling and called parties must bear no charges for calls originating and terminating within the same toll-free local calling scope.

(B) Intrastate long distance calls. The TRS carrier must discount its tariffed intrastate rates by 50% for TRS users.

(C) Access charges. A telecommunication provider must not impose access charges on calls that make use of this service or on calls that originate and terminate within the same toll-free local calling scope.

(D) Billing and collection services. Upon request by the TRS carrier, a telecommunications provider must provide billing and collection services in support of this service at just and reasonable rates.

(c) **Contract for the TRS carrier.**

(1) **Selection.** On or before April 1, 2000, the commission will issue a request for proposal and select a carrier to provide statewide TRS based on the following criteria: price, the interests of individuals who are hearing-impaired and speech-impaired in having access to a high quality and technologically advanced telecommunications system, and all other factors listed in the commission's request for proposals. The commission will consider each proposal in a manner that does not disclose the contents of the proposal to competing offerors. The commission's determination will include evaluations of charges for the service, service enhancements proposed by the offerors, and technological sophistication of the network proposed by the offerors. The commission will make a written award of the contract to the offeror whose proposal is the most advantageous to the state.

(2) **Contract administration.**

(A) Contract amendments. All recommendations for amendments to the contract must be filed with the executive director of the commission on June 1 of each year. The executive director is authorized to approve or deny all amendments to the contract between the TRS carrier and the commission, provided, however, that the commission specifically will approve any amendment that will increase the cost of TRS.

(B) Reports. Each TRS carrier and telecommunications provider must submit reports of their activities relating to the provision of TRS upon request of the commission or the Relay Texas administrator.

(C) Compensation. Each TRS carrier must be compensated by the TUSF for providing TRS at the rates, terms, and conditions established in its contract with the commission, subject to the following conditions:

(i) Reimbursement must include the TRS costs that are not paid by the calling or the called party, except the TRS carrier must not be reimbursed for the 50% discount set forth in subsection (b)(3)(B) of this section.

(ii) Reimbursement may include a return on the investment required to provide the service and the cost of unbillable and uncollectible calls placed through the service, provided that the cost of unbillable and

uncollectible calls must be subject to a reasonable limitation as determined by the commission.

(iii) The TRS carrier must submit a monthly report to the commission justifying its claims for reimbursement under the contract. Upon approval by the commission, the TUSF must make a disbursement in the approved amount.

(d) **Special features for TRS.**

(1) The commission may contract for a special feature for the state's telecommunications relay access service if the commission determines:

(A) the feature will benefit the communication of persons with an impairment of hearing or speech;

(B) installation of the feature will be of benefit to the state; and

(C) the feature will make the relay access service available to a greater number of users.

(2) If the carrier selected to provide the telecommunications relay access service is unable to provide the special feature at the best value to the state, the commission may make a written award of a contract for a different carrier to provide the special feature to the telecommunications carrier whose proposal is most advantageous to the state, considering;

(A) factors stated in subsection (c)(1) of this section;

(B) the past performance demonstrated capability and experience of the carrier.

(3) The commission will consider each proposal in a manner that does not disclose the contents of the proposal to a telecommunications carrier making a competing proposal.

(4) The commission's evaluation of a telecommunications carrier's proposal must include the considerations listed in subsection (c)(1) of this section.

(e) **Advisory Committee.** The commission will appoint an Advisory Committee, to be known as the Relay Texas Advisory Committee (RTAC) to assist the commission in administering TRS and the specialized telecommunications assistance program, as specified by the Public Utility Regulatory Act (PURA) §56.111. The Relay Texas administrator must serve as a liaison between RTAC and the commission. The Relay Texas administrator must ensure that RTAC receives clerical and staff support, including a secretary or court reporter to document RTAC meetings.

(1) **Composition**. The commission will appoint RTAC members based on recommended lists of candidates submitted by the organizations named as follows. RTAC must be composed of:

(A) two persons with disabilities other than disabilities of hearing and speech that impair the ability to effectively access the telephone network;

(B) one deaf person recommended by the Texas Deaf Caucus;

(C) one deaf person recommended by the Texas Association of the Deaf;

(D) one hearing-impaired person recommended by Self-Help for the Hard of Hearing;

(E) one hearing-impaired person recommended by the American Association of Retired Persons;

(F) one deaf and blind person recommended by the Texas Deaf or Blind Association;

(G) one speech-impaired person and one speech-impaired and hearing-impaired person recommended by the Coalition of Texans with Disabilities;

(H) two representatives of telecommunications utilities, one representing a local exchange company and one representing a telecommunications carrier other than a local exchange company, chosen from a list of candidates provided by the Texas Telephone Association;

(I) two persons, at least one of whom is deaf, with experience in providing relay services, recommended by the Texas Commission for the Deaf; and

(J) two public members recommended by organizations representing consumers of telecommunications services.

(2) **Conditions of membership.** The term of office of each RTAC member must be two years. A member whose term has expired must continue to serve until a qualified replacement is appointed. In the event a member cannot complete his or her term, the commission will appoint a qualified replacement to serve the remainder of the term. RTAC members must serve without compensation but must be entitled to reimbursement at rates established for state employees for travel and per diem incurred in the performance of their official duties, provided such reimbursement is authorized by the Texas Legislature in the General Appropriations Act.

(3) **Responsibilities.** The RTAC must undertake the following responsibilities:

(A) monitor the establishment, administration, and promotion of the statewide TRS;

(B) advise the commission regarding the pursuit of services that meet the needs of individuals who are hearing-impaired or speech-impaired in communicating with other users of telecommunications services;

(C) advise the commission regarding issues related to the contract between the TRS carrier and the commission, including any proposed amendments to such contract;

(D) advise the commission and the Texas Commission for the Deaf and Hard of Hearing, at the request of either commission, regarding issues related to the specialized telecommunications assistance program, including devices or services suitable to meet the needs of persons with disabilities in communicating with other users of telecommunications services.

(4) **Committee activities report.** After each RTAC meeting, the Relay Texas administrator must prepare a report to the commission regarding RTAC activities and recommendations.

(A) The Relay Texas administrator must file in Central Records under Project Number 13928, and provide to each commissioner, a report containing:

(i) the minutes of the meeting;

(ii) a memo summarizing the meeting; and

(iii) a list of items, recommended by RTAC, for the Relay Texas administrator to discuss with the TRS carrier, including issues related to the provisioning of the service that do not require amendments to the contract.

(B) Within 20 days after a report is filed, any commissioner may request that one or more items described in the report be placed on an agenda to be discussed during an open meeting of the commission. If no commissioner requests that the list be placed on an agenda for an open meeting, the report is deemed approved by the commission.

(5) **Evaluation of RTAC costs and effectiveness.** The commission will evaluate the advisory committee annually. The evaluation will be conducted by an evaluation team appointed by the executive director of the commission. The commission liaison, RTAC members, and other commission employees who work directly or indirectly with RTAC, TRS, or the equipment distribution program are not eligible to serve on the evaluation team. The evaluation team will report to the commission in open meeting each August of its findings regarding:

(A) the committee's work;

(B) the committee's usefulness; and

(C) the costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities.

§26.417. Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF).

(a) **Purpose.** This section provides the requirements for the commission to designate telecommunications providers as eligible telecommunications providers (ETPs) to receive funds from the Texas Universal Service Fund (TUSF) under §26.403 of this title (relating to the Texas High Cost Universal Service Plan (THCUSP)) and §26.404 of this title (relating to the Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan). Only telecommunications providers designated by the commission as ETPs qualify to receive universal service support under these programs.

(b) **Requirements for establishing ETP service areas.**

(1) THCUSP service area. A THCUSP service area is based upon wire centers (WCs) or other geographic area as determined appropriate by the commission. A telecommunications provider may be designated an ETP for any or all WCs that are wholly or partially contained within its certificated service area. An ETP must serve an entire WC, or other geographic area as determined appropriate by the commission, unless its certificated service area does not encompass the entire WC, or other geographic area as determined appropriate by the commission.

(2) Small and Rural ILEC Universal Service Plan service area. A Small and Rural ILEC Universal Service Plan service area for an ETP serving in a small or rural ILEC's territory must include the entire study area of such small or rural ILEC.

(c) **Criteria for designation of ETPs.**

(1) **Telecommunications providers.** A telecommunications provider, as defined in the Public Utility Regulatory Act (PURA) §51.002(10), is eligible to receive TUSF support in accordance with §26.403 or §26.404 of this title in each service area for which it seeks ETP designation if it meets the following requirements:

(A) the telecommunications provider has been designated an eligible telecommunications carrier, in accordance with §26.418 of this title (relating to the Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds), and provides the federally designated services to customers in order to receive federal universal service support;

(B) the telecommunications provider defines its ETP service area in accordance with subsection (b) of this section and assumes the obligation to offer any customer within an exchange in its ETP service area for which the provider receives support under this section, basic local telecommunications services, as defined in §26.403 of this title, at a rate not to exceed 150% of the ILEC's tariffed rate;

(C) the telecommunications provider offers basic local telecommunications services using either its own facilities, purchased unbundled network elements (UNEs), or a combination of its own facilities, purchased UNEs, or resale of another carrier's services;

(D) the telecommunications provider renders continuous and adequate service within an exchange in its ETP service area for which the provider receives

support under this section, in compliance with the quality of service standards defined in §26.52 of this title (relating to Emergency Operations), §26.53 of this title (relating to Inspections and Tests), and §26.54 of this title (relating to Service Objectives and Performance Benchmarks);

(E) the telecommunications provider offers services in compliance with §26.412 of this title (relating to Lifeline Service Programs); and

(F) the telecommunications provider advertises the availability of, and charges for, supported services using media of general distribution.

(2) **ILECs**. If the telecommunications provider is an ILEC, as defined in PURA §51.002(10), it must be eligible to receive TUSF support in accordance with §26.403 of this title in each service area for which it seeks ETP designation if it meets the requirements of paragraph (1) of this subsection and the following requirements:

(A) If the ILEC is regulated under Public Utility Regulatory Act (PURA) Chapter 58 or 59 it must either:

(i) reduce rates for services determined appropriate by the commission to an amount equal to its THCUSP support amount; or

(ii) provide a statement that it agrees to a reduction of its THCUSP support amount equal to its CCL, RIC and intraLATA toll revenues.

(B) If the ILEC is not regulated under PURA Chapter 58 or 59 it must reduce its rates for services determined appropriate by the commission by an amount equal to its THCUSP support amount.

(C) Any reductions in switched access service rates for ILECs with more than 125,000 access lines in service in this state on December 31, 1998, that are made in accordance with this section must be proportional, based on equivalent minutes of use, to reductions in intraLATA toll rates, and those reductions must be offset by equal disbursements from the universal service fund under PURA §56.021(1). This subparagraph expires August 31, 2007.

(d) **Designation of more than one ETP.**

(1) In areas not served by small or rural ILECs, as defined in §26.404(b) of this title, the commission may designate, upon application, more than one ETP in an ETP service area so long as each additional provider meets the requirements of subsection (c) of this section.

(2) In areas served by small or rural ILECs as defined in §26.404(b) of this title, the commission may designate additional ETPs if the commission finds that the designation is in the public interest.

(e) **Proceedings to designate telecommunications providers as ETPs.**

(1) At any time, a telecommunications provider may seek commission approval to be designated an ETP for a requested service area.

(2) To receive support under §26.403 or §26.404 of this title for exchanges purchased from an unaffiliated provider, the acquiring ETP must file an application, within 30 days after the date of the purchase, to amend its ETP service area to include those geographic areas in the purchased exchanges that are eligible for support.

(3) If an ETP receiving support under §26.403 or §26.404 of this title sells an exchange to an unaffiliated provider, it must file an application, within 30 days after the date of the sale, to amend its ETP designation to exclude those exchanges for which it was receiving support from its designated service area.

(f) **Requirements for application for ETP designation and commission processing of application.**

(1) **Requirements for notice and contents of application for ETP designation.**

(A) Notice of application. Notice must be published in the *Texas Register*. The presiding officer may require additional notice. Unless otherwise required by the presiding officer or by law, the notice must include at a minimum a description of the service area for which the applicant seeks designation, the proposed effective date of the designation, and the following language: "Persons who wish to comment on this application should notify the Public Utility Commission by (specified date, ten days before the proposed effective date). Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the PUCT Consumer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals may contact the commission through Relay Texas at (800) 735-2989."

(B) Contents of application. A telecommunications provider seeking to be designated as an ETP for a high cost service area in this state must file with the commission an application complying with the requirements of this section. A copy of the application must be delivered to the Office of Public Utility Counsel.

(i) Telecommunications providers. The application must:

(I) show that the applicant is a telecommunications provider as defined in PURA §51.002(10);

(II) show that the applicant has been designated by the commission as a telecommunications provider eligible for federal universal service support and show that the applicant offers federally supported services to customers under the terms of 47 United States Code §214(e) (relating to Provision of Universal Service) in order to receive federal universal service support;

(III) specify the THCUSP or small and rural ILEC service area in which the applicant proposes to be an ETP, show that the applicant offers each of the designated services, as defined in §26.403 of this title, throughout the THCUSP or small and rural ILEC service area for which it seeks an ETP designation, and show that the applicant assumes the obligation to offer the services, as defined in §26.403 of this title, to any customer in the THCUSP or small and rural ILEC service area for which it seeks ETP designation;

(IV) show that the applicant does not offer the designated services, as defined in §26.403 of this title, solely through total service resale;

(V) show that the applicant renders continuous and adequate service within the area or areas, for which it seeks designation as an ETP, in compliance with the quality of service standards defined in §§26.52, 26.53, and 26.54 of this title;

(VI) show that the applicant offers Lifeline and Link Up services in compliance with §26.412 of this title;

(VII) show that the applicant advertises the availability of and charges for designated services, as defined in §26.403 of this title, using media of general distribution;

(VIII) provide a statement detailing the method and content of the notice the applicant has provided or intends to provide to the public regarding the application and a brief statement explaining why the notice proposal is reasonable and that the notice proposal complies with applicable law;

(IX) provide a copy of the text of the notice;

(X) state the proposed effective date of the designation; and

(XI) provide any other information which the applicant wants considered in connection with the commission's review of its application.

(ii) ILECs. If the applicant is an ILEC, in addition to the requirements of clause (i) of this subparagraph, the application must show compliance with the requirements of subsection (c)(2) of this section.

(2) **Commission processing of application.**

(A) Administrative review. An application considered under this section is eligible for administrative review unless the telecommunications provider requests the application be docketed or the presiding officer, for good cause, determines at any point during the review that the application should be docketed.

(i) The effective date of the ETP designation must be no earlier than 30 days after the filing date of the application or 30 days after notice is completed, whichever is later.

(ii) The application will be reviewed for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant will be notified within ten working days of the filing date of the specific deficiency in its application. The earliest possible effective date of the application will be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any deadlines will be determined 30 days from the day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date.

(iii) While the application is under administrative review, commission staff and OPUC may submit requests for information to the applicant. Answers to such requests for information must be provided to commission staff and OPUC within ten days after receipt of the request by the applicant.

(iv) No later than 20 days after the filing date of the application or the completion of notice, whichever is later, interested persons may provide written comments or recommendations concerning the application to the commission staff. Commission staff must and OPUC may file with the presiding officer written comments or recommendations regarding the application.

(v) No later than 35 days after the proposed effective date of the application, the presiding officer will issue an order approving, denying, or docketing the application.

(B) Approval or denial of application. The application will be approved by the presiding officer if it meets the following requirements.

(i) The provision of service constitutes basic local telecommunications service as defined in §26.403 of this title.

(ii) Notice was provided as required by this section.

(iii) The applicant has met the requirements contained in subsection (c) of this section.

(iv) The ETP designation is consistent with the public interest in a technologically advanced telecommunications system and consistent with the preservation of universal service.

(C) Docketing. If, based on the administrative review, the presiding officer determines that one or more of the requirements have not been met, the presiding officer will docket the application. The requirements of subsection (c) of this section may not be waived.

(D) Review of the application after docketing. If the application is docketed, the effective date of the application will be automatically suspended to a date 120 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after the proposed effective date, whichever is later. Answers to requests for information must be filed with the commission within ten days after receipt of the request. Affected persons may move to intervene in the docket, and a hearing on the merits will be scheduled. A hearing on the merits will be limited to issues of eligibility. The application will be processed in accordance with the commission's rules applicable to docketed cases.

(g) **Relinquishment of ETP designation.** A telecommunications provider may seek to relinquish its ETP designation.

(1) **Area served by more than one ETP.** The commission will permit a telecommunications provider to relinquish its ETP designation in any area served by more than one ETP upon:

(A) written notification not less than 90 days prior to the proposed effective date of the relinquishment;

(B) determination by the commission that the remaining ETP or ETPs can provide basic local service to the relinquishing telecommunications provider's customers; and

(C) determination by the commission that sufficient notice of relinquishment has been provided to permit the purchase or construction of adequate facilities by any remaining ETP or ETPs.

(2) **Area where the relinquishing telecommunications provider is the sole ETP.** In areas where the relinquishing telecommunications provider is the only ETP, the commission may permit it to relinquish its ETP designation upon:

(A) written notification that the telecommunications provider seeks to relinquish its ETP designation; and

(B) commission designation of a new ETP for the service area or areas through the auction procedure provided in subsection (h) of this section.

(3) **Relinquishment for non-compliance.** The TUSF administrator must notify the commission when the TUSF administrator is aware that an ETP is not in compliance with the requirements of subsection (c) of this section.

(A) The commission will revoke the ETP designation of any telecommunications provider determined not to be in compliance with subsection (c) of this section.

(B) The commission may revoke a portion of the ETP designation of any telecommunications provider determined not to be in compliance with the quality of service standards defined in §§26.52, 26.53, and 26.54 of this title, in that portion of its ETP service area.

(h) **Auction procedure for replacing the sole ETP in an area.** In areas where a telecommunications provider is the sole ETP and seeks to relinquish its ETP designation, the commission will initiate an auction procedure to designate another ETP. The auction procedure will use a competitive, sealed bid, single-round process to select a telecommunications provider meeting the requirements of subsection (f)(1) of this section that will provide basic local telecommunications service at the lowest cost.

(1) **Announcement of auction.** Within 30 days of receiving a request from the last ETP in a service area to relinquish its designation, the commission will provide notice in the *Texas Register* of the auction. The announcement must at minimum detail the geographic location of the service area, the total number of access lines served, the forward-looking economic cost computed in accordance with §26.403 of this title, of providing basic local telecommunications service and the other services included in the benchmark calculation, existing tariffed rates, bidding deadlines, and bidding procedure.

(2) **Bidding procedure.** Bids must be received by the TUSF administrator not later than 60 days from the date of publication in the *Texas Register*.

(A) Every bid must contain:

(i) the level of assistance per line that the bidder would need to provide all services supported by universal service mechanisms;

(ii) information to substantiate that the bidder meets the eligibility requirements in subsection (c)(1) of this section; and

(iii) information to substantiate that the bidder has the ability to serve the relinquishing ETP's customers.

(B) The TUSF administrator must collect all bids and within 30 days of the close of the bidding period request that the commission approve the TUSF administrator's selection of the successful bidder.

(C) The commission may designate the lowest qualified bidder as the ETP for the affected service area or areas.

(i) **Requirements for annual affidavit of compliance to receive TUSF support.** An ETP serving a rural or non-rural study area must comply with the following requirements for annual compliance for the receipt of TUSF support.

(1) **Annual Affidavit of Compliance**. On or before September 1 of each year, an ETP that receives disbursements from the TUSF must file with the commission an affidavit certifying that the ETP is in compliance with the requirements for receiving money from the universal service fund and requirements regarding the use of money from each TUSF program from which the telecommunications provider receives disbursements.

(2) **Filing Affidavit**. The affidavit used must be the annual compliance affidavit approved by the commission.

§26.418. Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds.

(a) **Purpose.** This section provides the requirements for the commission to designate common carriers as eligible telecommunications carriers (ETCs) to receive support from the federal universal service fund (FUSF) in accordance with 47 United States Code (U.S.C.) §214(e) (relating to Provision of Universal Service). In addition, this section provides guidelines for rural and non-rural carriers to meet the federal requirements of annual certification for FUSF support criteria and, if requested or ordered, for the disaggregation of rural carriers' FUSF support.

(b) **Application.** This section applies to a common carrier seeking designation as an ETC, except for commercial mobile radio service (CMRS) resellers. A CMRS reseller may not seek designation from the commission, but instead may seek designation as an ETC by the Federal Communications Commission (FCC). This section also applies to a common carrier that has been designated by the commission as an ETC, including a CMRS reseller. Subsection (i) of this section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Act (PURA) §52.154.

(c) **Service areas.** The commission may designate ETC service areas according to the following criteria.

(1) **Non-rural service area.** To be eligible to receive federal universal service support in non-rural areas, a carrier must provide federally supported services in accordance with 47 Code of Federal Regulations (C.F.R.) §54.101 (relating to Supported Services for Rural, Insular, and High Cost Areas) throughout the area for which the carrier seeks to be designated an ETC.

(2) **Rural service area.** In the case of areas served by a rural telephone company, as defined in §26.404 of this title (relating to Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan), a carrier must provide federally supported services in accordance with 47 C.F.R. §54.101 throughout the study area of the rural telephone company in order to be eligible to receive federal universal service support.

(d) **Criteria for determination of ETCs.** A common carrier must be designated as eligible to receive federal universal service support if it:

(1) offers the services that are supported by the federal universal service support mechanisms under 47 C.F.R. §54.101 either using its own facilities or a combination of its own facilities and resale of another carrier's services; and

(2) advertises the availability of and charges for such services using media of general distribution.

(e) **Criteria for determination of receipt of federal universal service support.** In order to receive federal universal service support, a common carrier must:

(1) meet the requirements of subsection (d) of this section;

(2) offer Lifeline Service to qualifying low-income consumers in compliance with 47 C.F.R. Part 54, Subpart E (relating to Universal Service Support for Low-Income Consumers); and

(3) offer toll limitation services in accordance with 47 C.F.R. §54.400 (relating to Terms and Definitions) and §54.401 (relating to Lifeline Defined).

(f) **Designation of more than one ETC.**

(1) Non-rural service areas. In areas not served by rural telephone companies, as defined in §26.404 of this title, the commission will designate, upon application, more than one ETC in a service area so long as each additional carrier meets the requirements of subsection (c)(1) and (d) of this section.

(2) Rural service areas. In areas served by rural telephone companies, as defined in §26.404 of this title, the commission may designate as an ETC a carrier that meets the requirements of subsection (c)(2) and (d) of this section if the commission finds that the designation is in the public interest.

(g) **Proceedings to designate ETCs.**

(1) At any time, a common carrier may seek commission approval to be designated an ETC for a requested service area.

(2) To receive support under this section for exchanges purchased from an unaffiliated carrier, the acquiring ETC must file an application, within 30 days after the date of the purchase, to amend its ETC service area to include those geographic areas that are eligible for support.

(3) If an ETC receiving support under this section sells an exchange to an unaffiliated carrier, it must file an application, within 30 days after the date of the sale, to amend its ETC designation to exclude from its designated service area those exchanges for which it was receiving support.

(h) **Application requirements and commission processing of applications.**

(1) Requirements for notice and contents of application.

(A) Notice of application. Notice must be published in the *Texas Register*. The presiding officer may require additional notice. Unless otherwise required by the presiding officer or by law, the notice must include at a minimum a description of the service area for which the applicant seeks eligibility, the proposed effective date of the designation, and the following statement: "Persons who wish to comment on this application should notify the Public Utility Commission of Texas by (specified date, ten days before the proposed effective date). Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the PUCT Consumer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals may contact the commission through Relay Texas at (800) 735-2989."

(B) Contents of application for each common carrier seeking ETC designation. A common carrier that seeks to be designated as an ETC must file with the commission an application complying with the requirements of this section. A copy of the application must be delivered to the Office of Public Utility Counsel (OPUC). The application must:

(i) show that the applicant offers each of the services that are supported by the FUSF support mechanisms under 47 U.S.C. §254(c) (relating to Universal Service) either using its own facilities or a combination of its own facilities and resale of another carrier's services throughout the service area for which it seeks designation as an ETC;

(ii) show that the applicant assumes the obligation to offer each of the services that are supported by the FUSF support mechanisms under 47 U.S.C. §254(c) to any consumer in the service area for which it seeks designation as an ETC;

(iii) show that the applicant advertises the availability of, and charges for, such services using media of general distribution;

(iv) show the service area in which the applicant seeks designation as an ETC;

(v) contain a statement detailing the method and content of the notice the applicant has provided or intends to provide to the public regarding the application and a brief statement explaining why the proposed notice is reasonable and in compliance with applicable law;

(vi) contain a copy of the text of the notice;

(vii) contain the proposed effective date of the designation; and

(viii) contain any other information which the applicant wants considered in connection with the commission's review of its application.

(C) Contents of application for each common carrier seeking ETC designation and receipt of federal universal service support. A common carrier that seeks to be designated as an ETC and receive federal universal service support must file with the commission an application complying with the requirements of this section. A copy of the application must be delivered to the Office of Public Utility Counsel. The application must:

(i) comply with the requirements of subparagraph (B) of this paragraph;

(ii) show that the applicant offers Lifeline Service to qualifying low-income consumers in compliance with 47 C.F.R. Part 54, Subpart E; and

(iii) show that the applicant offers toll limitation services in accordance with 47 C.F.R. §54.400 and §54.401.

(2) **Commission processing of application.**

(A) **Administrative review**. An application considered under this section is eligible for administrative review unless the presiding officer, for good cause, determines at any point during the review that the application should be docketed.

(i) The effective date will be no earlier than 30 days after the filing date of the application or 30 days after notice is completed, whichever is later.

(ii) The application will be reviewed for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant will be notified within ten working days of the filing date of the specific deficiency in its application. The earliest possible effective date of the application will be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any deadlines will be determined 30 days from the day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date.

(iii) While the application is under administrative review commission staff and the staff of OPUC may submit requests for information to the telecommunications carrier. Three copies of all answers to such requests for information must be provided to commission staff and OPUC within ten days after receipt of the request by the telecommunications carrier.

(iv) No later than 20 days after the filing date of the application or the completion of notice, whichever is later, interested persons may provide commission staff with written comments or recommendations concerning the application. Commission staff must and OPUC may file with the presiding officer written comments or recommendations regarding the application.

(v) No later than 35 days after the proposed effective date of the application, the presiding officer will issue an order approving, denying, or docketing the application.

(B) Approval or denial of application.

(i) An application filed in accordance with paragraph (1)(B) of this subsection will be approved by the presiding officer if the application meets the following requirements:

(I) the provision of service constitutes the services that are supported by the FUSF support mechanisms under 47 U.S.C. §254(c);

(II) the applicant will provide service using either its own facilities or a combination of its own facilities and resale of another carrier's services;

(III) the applicant advertises the availability of, and charges for, such services using media of general distribution;

(IV) notice was provided as required by this section;

(V) the applicant satisfies the requirements contained in subsection (c) of this section; and

(VI) if, in areas served by a rural telephone company, the ETC designation is consistent with the public interest.

(ii) An application filed in accordance with paragraph (1)(C) of this subsection will be approved by the presiding officer if the application meets the following requirements:

(I) the applicant has satisfied the requirements set forth in clause (i) of this subparagraph;

(II) the applicant offers Lifeline Service to qualifying low-income consumers in compliance with 47 C.F.R. Part 54, Subpart E; and

(III) the applicant offers toll limitation services in accordance with 47 C.F.R. §54.400 and §54.401.

(C) **Docketing.** If, based on the administrative review, the presiding officer determines that one or more of the requirements have not been met, the presiding officer will docket the application.

(D) **Review of the application after docketing**. If the application is docketed, the effective date of the application will be automatically suspended to a date 120 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after the proposed effective date, whichever is later. Three copies of all answers to requests for information must be filed with the commission within ten days after receipt of the request. Affected persons may move to intervene in the docket, and a hearing on the merits will be scheduled. A hearing on the merits will be limited to issues of eligibility. The application will be processed in accordance with the commission's rules applicable to docketed cases.

(E) **Waiver**. In the event that an otherwise ETC requests additional time to complete the network upgrades needed to provide single-party service, access to enhanced 911 service, or toll limitation, the commission may grant a waiver of these service requirements upon a finding that exceptional circumstances prevent the carrier from providing single-party service, access to enhanced 911 service, or toll limitation. The period for the waiver must not extend beyond the time that the commission deems necessary for that carrier to complete network upgrades to provide single-party service, access to enhanced 911 service, or toll limitation services.

(i) **Designation of ETC for unserved areas.** If no common carrier will provide the services that are supported by federal universal service support mechanisms under 47 U.S.C. §254(c) to an unserved community or any portion thereof that requests such service, the commission, with respect to intrastate services, will determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof and will order such carrier or carriers to provide such service for that unserved community or portion thereof.

(j) **Relinquishment of ETC designation.** A common carrier may seek to relinquish its ETC designation.

(1) **Area served by more than one ETC.** The commission will permit a common carrier to relinquish its designation as an ETC in any area served by more than one ETC upon:

(A) written notification not less than 90 days prior to the proposed effective date that the common carrier seeks to relinquish its designation as an ETC;

(B) determination by the commission that the remaining eligible telecommunications carrier or carriers can offer federally supported services to the relinquishing carrier's customers; and

(C) determination by the commission that sufficient notice of relinquishment has been provided to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier or carriers.

(2) **Area where the common carrier is the sole ETC.** In areas where the common carrier is the only ETC, the commission may permit it to relinquish its ETC designation upon:

(A) written notification not less than 90 days prior to the proposed effective date that the common carrier seeks to relinquish its designation as an ETC; and

(B) commission designation of a new ETC for the service area or areas.

(k) **Rural and non-rural carriers' requirements for annual certification to receive FUSF support.** A common carrier serving a rural or non-rural study area must comply with the following requirements for annual certification for the receipt of FUSF support.

(1) **Annual certification.** Common carriers must provide the commission with an affidavit annually, on or before September 1 of each year, which certifies that the carrier is complying with the federal requirements for the receipt of FUSF support. Upon receipt and acceptance of the affidavits filed on or before September 1 each year, the commission will certify these carriers' eligibility for FUSF to the FCC and the Federal Universal Service Fund Administrator by October 1 of each year.

(2) **Failure to file.** Common carriers failing to file an affidavit by September 1 may still be certified by the commission for annual FUSF. However, the carrier is ineligible for support until the quarter following the federal universal service administrator's receipt of the commission's supplemental submission of the carrier's compliance with the federal requirements.

(3) **Supplemental certification.** For carriers not subject to the annual certification process, the schedule set forth in 47 C.F.R. §54.313 and 47 C.F.R. §54.314(d) for the filing of supplemental certifications applies.

(4) **Recommendation for Revocation of FUSF support certification.** The commission may recommend the revocation of the FUSF support certification of any carrier that it determines has not complied with the federal requirements in accordance with 47 U.S.C. §254(e) and will review any challenge to a carrier's FUSF support certification and make an appropriate recommendation as a result of any such review.

(l) **Disaggregation of rural carriers' FUSF support.** Common carriers serving rural study areas must comply with the following requirements regarding disaggregation of FUSF support.

(1) **Abstain from filing.** If a rural ILEC abstains from filing an election on or before May 15, 2002, the carrier is prohibited from disaggregating its FUSF support unless

it is ordered to do so by the commission in accordance with the terms of paragraph (5) of this subsection.

(A) a rural ILEC may choose to certify to the commission that it will not disaggregate at this time;

(B) a rural ILEC may seek disaggregation of its FUSF support by filing a targeted plan with the commission that meets the criteria in paragraph (3) of this subsection, subject to the commission's approval of the plan;

(C) a rural ILEC may self-certify a disaggregation targeted plan that meets the criteria in paragraphs (3) and (4) of this subsection, disaggregate support to the wire center level or up to no more than two cost zones, or mirror a plan for disaggregation that has received prior commission approval; or

(D) if the rural ILEC serves a study area that is served by another carrier designated as an ETC prior to the effective date of 47 C.F.R. §54.315, (June 19, 2001), the ILEC may only self-certify the disaggregation of its FUSF support by adopting a plan for disaggregation that has received prior commission approval.

(2) **Abstain from filing.** If a rural ILEC abstains from filing an election on or before May 15, 2002, the carrier is prohibited from disaggregating its FUSF support unless it is ordered to do so by the commission in accordance with the terms of paragraph (5) of this subsection.

(3) **Requirements for rural ILECs' disaggregation plans.** In accordance with federal requirements, a rural ILEC's disaggregation plan, whether submitted in accordance with paragraph (1)(B), (C) or (D) of this subsection, must meet the following requirements:

(A) the sum of the disaggregated annual support must be equal to the study area's total annual FUSF support amount without disaggregation;

(B) the ratio of the per line FUSF support between disaggregation zones for each disaggregated category of FUSF support must remain fixed over time, except as changes are required in accordance with paragraph (5) of this subsection;

(C) the ratio of per line FUSF support must be publicly available;

(D) the per line FUSF support amount for each disaggregated zone or wire center must be recalculated whenever the rural ILEC's total annual FUSF support amount changes and revised total per line FUSF support and updated access line counts must then be applied using the changed FUSF support amount and updated access line counts applicable at that point;

(E) each support category complies with subparagraphs (A) and (B) of this paragraph;

(F) monthly payments of FUSF support must be based upon the annual amount of FUSF support divided by 12 months if the rural ILEC's study area does not contain a competitive carrier designated as an ETC; and

(G) a rural ILEC's disaggregation plan methodology and the underlying access line count upon which it is based will apply to any competitive carrier designated as an ETC in the study area.

(4) **Additional requirements for self-certification of a disaggregation plan.** In accordance with federal requirements, a rural ILEC's self-certified disaggregation

plan must also include the following items in addition to those items required by paragraph (3) of this subsection:

(A) support for, and a description of, the rationale used, including methods and data relied upon, as well as a discussion of how the plan meets the requirements in paragraph (3) of this subsection and this paragraph;

(B) a reasonable relationship between the cost of providing service for each disaggregation zone within each disaggregation category of support proposed;

(C) a clearly specified per-line level of FUSF support for each category;

(D) if the plan uses a benchmark, a detailed explanation of the benchmark and how it was determined that the benchmark is generally consistent with how the level of support for each category of costs was derived so that competitive ETCs may compare the disaggregated costs for each cost zone proposed; and

(E) maps identifying the boundaries of the disaggregated zones within the study area.

(5) **Disaggregation upon commission order.** The commission on its own motion or upon the motion of an interested party may order a rural ILEC to disaggregate FUSF support under the following criteria:

(A) the commission determines that the public interest of the rural study area is best served by disaggregation of the rural ILEC's FUSF support;

(B) the commission establishes the appropriate disaggregated level of FUSF support for the rural ILEC; or

(C) changes in ownership or changes in state or federal regulation warrant the commission's action.

(6) **Effective dates of disaggregation plans.** The effective date of a rural ILEC's disaggregation plan must be as specified by federal law.

§26.419. Telecommunication Resale Providers Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF) for Lifeline Service.

(a) **Scope and Purpose.** This section provides the requirements for the commission to designate certificated providers of local exchange telephone service that provide this service solely through the resale of an incumbent local exchange carrier's (ILEC) services as an eligible telecommunications provider (ETP) for the specific purpose of receiving funds for Lifeline Service from the Texas Universal Service Fund (TUSF) under §26.412 of this title (relating to the Lifeline Service Program). Only resale ETPs as defined by §26.412(b)(2) of this title must qualify to receive universal service support under this program.

(b) **Requirements for establishing ETP service areas.**

(1) **Texas High Cost Universal Service Plan (THCUSP) service area.** A THCUSP service area must be based upon wire centers (WCs) or other geographic area as determined appropriate by the commission. A telecommunications provider may be designated an ETP for any or all WCs contained within its certificated service area. An ETP must serve an entire WC or other geographic area as determined appropriate by the commission.

(2) **Small and Rural ILEC Universal Service Plan (SRIUSP) service area.** A SRIUSP service area for an ETP serving in a small or rural ILEC's territory must include the entire study area of such small or rural ILEC.

(c) **Criteria for designation of ETPs**. A resale ETP as defined by §26.412(b)(2) of this title must be eligible to receive TUSF support in accordance with§26.412 of this title for Lifeline Service only in each service area of a large company (THCUSP) or the study area of a small company (SRIUSP) for which it seeks ETP designation if it meets the following requirements:

(1) the Resale ETP defines its ETP service area in accordance with subsection (b) of this section and assumes the obligation to offer service to any customer in its ETP service area;

(2) offers Lifeline Services as provided by 47 C.F.R. Part 54, Subpart E; and

(3) advertises the availability of, and the charges for, supported services using media of general distribution.

(d) **Requirements for application for Resale ETP designation and commission processing of application.**

(1) **Requirements for notice and contents of application for Resale ETP designation.**

(A) **Notice of application.** Notice must be published in the *Texas Register*. The presiding officer may require additional notice. Unless otherwise required by the presiding officer or by law, the notice must include at a minimum a description of the service area for which the applicant seeks designation, the proposed effective date of the designation, and the following language: "Persons who wish to comment on this application should notify the Public Utility Commission by (specified date, ten days before the proposed

effective date). Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the PUCT Consumer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals may contact the commission through Relay Texas at (800) 735-2989 ."

(B) **Contents of application.** A certificated provider of local exchange telephone service seeking to be designated as a resale ETP must file with the commission an application complying with the requirements of this section. A copy of the application must be delivered to the Office of Public Utility Counsel (OPUC). The application must:

(i) demonstrate that the applicant is a certificated provider of local exchange telephone service that resells basic local telecommunication services, as defined in §26.403 of this title (relating to Texas High Cost Universal Service Plan (THCUSP));

(ii) demonstrate that the applicant assumes the obligation to offer Lifeline Services, as defined in §26.412 of this title, to any customer in its certificated service area;

(iii) demonstrate that the applicant will advertise the availability of and the charges for designated services, as defined in §26.403 of this title, using media of general distribution;

(iv) contain a statement detailing the content of the notice the applicant proposes for publication in the *Texas Register* regarding the application as well as a brief statement explaining why the proposed notice is reasonable and that it complies with applicable law;

(v) provide a copy of the text of the notice;

(vi) state the proposed effective date of the designation; and

(vii) provide any other information the applicant wants considered in connection with the commission's review of its application.

(2) Commission processing of application.

(A) **Administrative review.** An application considered under this section is eligible for administrative review unless the certificated provider of local exchange telephone service requests the application be docketed or the presiding officer, for good cause, determines at any point during the review that the application should be docketed.

(i) The effective date of the Resale ETP designation must be no earlier than 30 days after notice is published in the *Texas Register*.

(ii) The application will be reviewed for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant will be notified within ten working days of the filing date of the specific deficiency in its application. The earliest possible effective date of the application will be no earlier than 30 days after notice is published in the *Texas Register*.

(iii) While the application is being administratively reviewed, commission staff and OPUC may submit requests for information to the applicant. Three copies of all answers to such requests for

information must be provided to commission staff and OPUC within ten days after receipt of the request by the applicant.

(iv) No later than 20 days after the completion of notice, interested persons may provide written comments or recommendations concerning the application to the commission staff. Commission staff must and OPUC may file with the presiding officer written comments or recommendations regarding the application.

(v) No later than 35 days after the proposed effective date of the application, the presiding officer must issue an order approving, denying, or docketing the application.

(B) **Approval of application.** The application will be approved by the presiding officer if it meets all the following requirements:

(i) The provision of service constitutes basic local telecommunications service as defined in §26.403 of this title and Lifeline Service as defined in §26.412 of this title.

(ii) Notice was provided as required by this section.

(iii) The applicant has met the requirements contained in this subsection.

(iv) The ETP designation is consistent with the public interest in a technologically advanced telecommunications system and consistent with the preservation of universal service.

(C) **Docketing.** If, based on the administrative review, the presiding officer determines that one or more of the requirements has not been met, the presiding officer will docket the application. The requirements of this subsection may not be waived.

(D) **Review of the application after docketing.** If the application is docketed, the effective date of the application will be automatically suspended until an order is issued in the proceeding granting the application. Three copies of all answers to requests for information must be filed with the commission within ten days after receipt of the request. Affected persons may move to intervene in the docket, and a hearing on the merits will be scheduled. A hearing on the merits will be limited to issues of eligibility. The application will be processed in accordance with the commission's rules applicable to docketed cases.

(e) **Relinquishment of ETP designation.** A certificated provider of local exchange telephone service may seek to relinquish its ETP designation. The relinquishment of an ETP designation does not relieve the certificated provider from its obligation to provide Lifeline Service.

(f) **Relinquishment for non-compliance.** The TUSF administrator must notify the commission when the TUSF administrator is aware that a resale ETP is not in compliance with the requirements of subsection (c) of this section. The commission will revoke the ETP designation of any resale ETP determined not to be in compliance with subsection (c) of this section.

(g) **Requirements for annual affidavit of compliance to receive TUSF support.** A resale ETP serving a rural or non-rural study area must comply with the following requirements for annual compliance for the receipt of TUSF support for Lifeline Services:

(1) **Annual Affidavit of Compliance**. On or before September 1 of each year, a resale ETP that receives disbursements from the TUSF must file with the commission an affidavit certifying that the ETP is in compliance with the requirements for receiving money from the universal service fund and requirements regarding the use of money from each TUSF program from which the telecommunications provider receives disbursements.

(2) **Filing Affidavit**. The affidavit used must be the annual compliance affidavit approved by the commission.

§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 and technologically evolving telecommunications market. In particular this section establishes specific reporting and notification requirements and mandates certain minimum 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).

(b) **Application.** This section applies to a certificated telecommunications utility (CTU).

(c) **9-1-1 service provider certification requirements.**

(1) Only a CTU may be a 9-1-1 database management services provider.

(2) Only a CTU may be a 9-1-1 network services provider.

(3) Unless acting as a 9-1-1 database management services provider or 9-1-1 network services provider, PSAPs and 9-1-1 administrative entities do not require certification by the commission.

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

(1) **Network Services Plan.** Before providing service, a 9-1-1 network services provider must prepare and file with the commission a network services plan. The plan must be updated upon a change affecting a 9-1-1 administrative entity, a 9-1-1 database management services provider, or the 9-1-1 network services provider, but not more often than quarterly of each year. Material submitted to the commission in accordance with this section believed to contain proprietary or confidential information must be identified as such, and the commission may enter an appropriate protective order. The network services plan must 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 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 must 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 9-1-1 customer premises equipment implications, if any, related to upgrades and modifications.

(2) **Database Services Plan.** Before providing service, a 9-1-1 database management services provider must prepare and file with the commission a database services plan. The plan must be updated upon a change affecting a 9-1-1 administrative entity, a 9-1-1 database management services provider, or the 9-1-1 network services provider, but not more often than quarterly of each year. Material submitted to the commission in accordance with this section believed to contain proprietary or confidential information must be identified as such, and the

commission may enter an appropriate protective order. The database services plan must 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 must 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 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 must notify each affected 9-1-1 administrative entity 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.** To ensure network interoperability and a consistent level of service quality the following standards apply.

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

(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, or its equivalent as applicable, on the direct dedicated 9-1-1 trunk groups. If a CTU is a 9-1-1 network services provider, the CTU must provide a P.01 grade of service, or its equivalent as applicable, to the PSAP.

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

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

(A) Provide to each applicable 9-1-1 administrative entity the name, title, address, and telephone number of the telecommunications provider's 9-1-1 contacts including a designated contact person to be available at all times to work with the appropriate 9-1-1 administrative entity or entities, CSEC and the commission to resolve 9-1-1-related emergencies. CSEC must be

notified of any change to a telecommunications provider's designated 9-1-1 contact personnel within five working days.

(B) Develop a 9-1-1 disaster recovery and service restoration plan with input from the applicable 9-1-1 administrative entity, CSEC, and the commission.

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

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

(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 must 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-dial tone 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 must:

(A) Provide copies of the MSAG for each 9-1-1 administrative entity the 9-1-1 database management services provider 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 must make all updates to the MSAG electronically available to CTUs within 24 hours of the 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 must delete the records as expeditiously as possible within a maximum time frame of 30 calendar days.

(g) **Cost recovery.** A CTU is prohibited from charging a 9-1-1 administrative entity for, 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.

(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 section, must file within 90 days from the effective date of this section 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.

(i) **Migration of 9-1-1 Service.** Unless otherwise determined by the commission, nothing in this rule, any interconnection agreement, or any commercial agreement may be interpreted to impair a 9-1-1 administrative entity's authority to migrate to newer functionally equivalent IP-based 9-1-1 systems or NG9-1-1 systems, or to require the removal of unnecessary direct 9-1-1 dedicated trunks, circuits, databases, or functions.

(1) For purposes of this subsection, "unnecessary direct dedicated 9-1-1 trunks" means those dedicated 9-1-1 trunks that generally would be part of a local interconnection arrangement but for: the CTU's warrant in writing that the direct dedicated 9-1-1 trunks are unnecessary and all 9-1-1 traffic from the CTU will be accommodated by another 9-1-1 service arrangement that has been approved by the appropriate 9-1-1 administrative entity; and written approval from the appropriate 9-1-1 administrative entity accepting the CTU's warrant. A 9-1-1 network services provider or CTU presented with such written documentation from the CTU and the appropriate 9-1-1 administrative entity must rely on the warrant of the CTU and the appropriate 9-1-1 administrative entities.

(2) Paragraph (1) of this subsection is intended to promote and ensure collaboration so that 9-1-1 service architecture and provisioning modernization can proceed expeditiously for the benefit of improvements in the delivery of 9-1-1 emergency services. Paragraph (1) of this subsection does not require or authorize a 9-1-1 administrative entity's rate center service plan specifications or a 9-1-1 network architecture deviation that causes new, material cost shifting between telecommunications providers or between telecommunications providers and 9-1-1 administrative entities. Examples of such a deviation include points of interconnection different from current LATA configurations and requiring provisioning of the 9-1-1 network with a similar type deviation that may involve new material burdens on competition or the public interest.

(j) **9-1-1 Service Agreement.**

(1) A CTU that provides local exchange service to end users must execute a separate 9-1-1 service agreement with each appropriate 9-1-1 administrative entity and collect and remit required 9-1-1 emergency service fees to the appropriate authority in accordance with such a 9-1-1 service agreement.

(2) A CTU that provides resold local exchange service to end users must execute a separate 9-1-1 service agreement with each appropriate 9-1-1 administrative entity and collect and remit required 9-1-1 emergency service fees to the appropriate authority in accordance with such a 9-1-1 service agreement.

This agency certifies that the adoption 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 §26.55, §26.78, §26.87, and §26.142, and §26.208 are repealed without changes to the text as proposed; §§26.5, 26.30, 26.31, 26.34, 26.89, 26.111, 26.130, 26.207, 26.208, 26.276, 26.405 are hereby adopted with changes to the text as proposed; and §§26.32, 26.52, 26.53, 26.54, 26.73, 26.79, 26.80, 26.85, 26.123, 26.127, 26.128, 26.171, 26.175, 26.209, 26.210, 26.211, 26.214, 26.215, 26.217, 26.221, 26.224, 26.272, 26.403, 26.404, 26.407, 26.409, 26.414, 26.417, 26.418, 26.419, 26.433 are hereby adopted without changes to the text as proposed.

Signed at Austin, Texas the ____ day of NOVEMBER 2023.

PUBLIC UTILITY COMMISSION OF TEXAS

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KATHLEEN JACKSON, INTERIM CHAIR

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WILL MCADAMS, COMMISSIONER

_____

LORI COBOS, COMMISSIONER

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JIMMY GLOTFELTY, COMMISSIONER