

PROJECT NO. 54589

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

**PROPOSAL FOR PUBLICATION OF REPEALS, AMENDMENTS, AND NEW RULE
IN CHAPTER 26 SUBSTANTIVE RULES APPLICABLE TO
TELECOMMUNICATIONS SERVICE PROVIDERS
AS APPROVED AT THE SEPTEMBER 28, 2023 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes several repeals and amendments, and one new rule in Chapter 26 Substantive Rules Applicable to Telecommunication Service Providers. The commission also proposes corresponding revisions to commission forms.

The proposed repeals, amendments, and new rule are listed in order as follows: Subchapter A, §26.5, relating to Definitions; Subchapter B, §26.30, relating to Complaints, §26.31, relating to Disclosures to Applicants and Customers, §26.32, relating to Protection Against Unauthorized Billing Charges, §26.34, relating to Telephone Prepaid Calling Services; Subchapter C, §26.52, relating to Emergency Operations, §26.53, relating to Inspections and Tests, §26.54, relating to Service Objectives and Performance Benchmarks, Repeal of §26.55, relating to Monitoring of Service; Subchapter D, §26.73, relating to Annual Earnings Reports, Repeal of §26.78, relating to State Agency Utility Account Information, §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, Repeal of §26.87, relating to Infrastructure Reports, §26.89, relating to Nondominant Carriers' Obligations Regarding Information on Rates and Services; Subchapter E, §26.111, relating to Certificate of Operating Authority (COA) and

Service Provider Certificate of Operating Authority (SPCOA) Criteria; Subchapter F, §26.127, relating to Abbreviated Dialing Codes, §26.128, relating to Telephone Directories, §26.129, relating to Equal Opportunity Reports, §26.130, relating to Selection of Telecommunications Utilities; Subchapter G, Repeal of §26.142, relating to Integrated Services Digital Network (ISDN); Subchapter I, §26.171, relating to relating to Small Incumbent Local Exchange Company Regulatory Flexibility, §26.175, relating to Reclassification of Telecommunications Services for Electing Incumbent Local Exchange Companies (ILECs); Subchapter J, §26.207, relating to Form and Filing of Tariffs, Repeal of §26.208, relating to General Tariff Procedures, new 26.208, relating to General Tariff Procedures, §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; Subchapter L, §26.272, relating to Interconnection, §26.276, relating to Unbundling; Subchapter P, §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, §26.405, relating to Financial Need for Continued Support, §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, §26.417, 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; Subchapter Q, §26.433, relating to Roles and Responsibilities of 9-1-1 Service Providers.

Rule Review Stakeholder Recommendations

On February 10, 2023, commission staff filed a preliminary notice and request for comments which was published in the *Texas Register* on March 3, 2023, at 48 TexReg 1368. Comments were received by the Commission on State Emergency Communications, the Texas Cable Association, the Texas Statewide Telephone Cooperative, Inc., and the Texas Telephone Association. Based upon filed comments and an internal review by commission staff, the commission proposes the following rule changes.

The proposed changes would repeal 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.

The proposed changes would make minor and confirming changes to the following rules, such as updating contact resources used by individuals with hearing or speech difficulties or removing requirements to file multiple copies of a document with the commission: §26.31, relating to

Disclosures to Applicants and Customers; §26.34, relating to Telephone Prepaid Calling Services, §26.73, relating to Annual Earnings Reports; §26.79 relating to Equal Opportunity Reports; §26.127, relating to Abbreviated Dialing Codes; §26.129, relating to Caller Identification Services; §26.130, relating to Selection of Telecommunications Utilities; §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); §26.214, 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; §26.276, relating to Unbundling, §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; and §26.419, relating to Telecommunications Resale Providers' Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF) for Lifeline Service.

The proposed changes would amend §26.5, relating to Definitions, by revising §26.5(191), which defines “public service answering point (PSAP),” to include an emergency communications center. This is an informal term used frequently by the Commission on State Emergency Communications (CSEC) and the Federal Communications Commission (FCC) to refer to a PSAP.

The proposed changes would amend §26.30, relating to Complaints, and §26.32, relating to Protection Against Unauthorized Billing Charges, by changing 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 is to align with recent changes to customer protection rules in Project 52796.

The proposed changes would amend §26.52, relating to Emergency Operations, by requiring 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.

The proposed changes would amend §26.53, relating to Inspections and Tests, by revising 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.

The proposed changes would amend §26.54, relating to Service Objectives and Performance Benchmarks, by deleting subparagraph (b) relating to one-party line service and voice band data.

The proposed changes would amend §26.80, relating to Annual Report on Historically Underutilized Businesses, by expanding 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).

The proposed changes would amend §26.85, relating to Report on Workforce Diversity and other Business Practices, by expanding 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.

The proposed changes would amend §26.111, relating to Certificate of Operating Authority (COA) and Service Provider Certificate of Operating Authority (SPCOA) Criteria, by revising paragraph (i)(4) to require applicants to file SPCOA amendment applications with CSEC via electronic mail within five working days from the date the amendment was filed. The proposed change to paragraph (i)(4) would also require applicants to provide notice of the SPCOA amendment applications to all affected 9-1-1 administrative entities in the manner provided by subparagraphs (3)(A)-(D). Additionally, the proposed changes would revise paragraph (m)(2) 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 proposes minor and conforming changes to the commission prescribed SPCOA application form.

The proposed changes would also amend §26.111 and §26.272, relating to Interconnection, by correcting the reference to “9-1-1 entity” in paragraph §26.111(i)(4) and §26.272(e)(1)(B)(vi)(I) to properly refer to “9-1-1 administrative entity.”

The proposed changes would amend §26.128, relating to Telephone Directories, by replacing the term State of Texas Telephone Directory with Capitol Complex Telephone System Directory in paragraphs (b)(1) and (2). The proposed changes would also delete the requirement under paragraph (e)(5) for telephone directories published by certain telecommunications utilities or its affiliates to include sample long distance rates.

The proposed changes would amend §26.433, relating to Roles and Responsibilities of 9-1-1 Service Providers, by correcting the references to “9-1-1 administrative entity” in paragraph (i)(1).

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 proposes repealing and replacing §26.208, relating to General Tariff Procedures; and proposes amending §26.89, relating to Nondominant Carriers’

Obligations Regarding Information on Rates and Services; §26.207, relating to Form and Filing of Tariffs, §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.

Proposed 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. Proposed 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, proposed 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 would be revised to remove references to docketing of an application filed under those provisions. Additionally, §26.209 and §26.210 would be amended 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 would be amended to clearly reference §§26.208, 26.209, and 26.211. Section 26.211 would be 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. Lastly, §§26.89, 26.207, 26.209, 26.210, and 26.211 would be revised to more clearly reflect the statutory language of PURA §52.251.

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 proposes amending §26.407, relating to Small and Rural Incumbent Local Exchange Company Universal Service, to implement HB 1425. The commission also proposes amending the commission prescribed form for the annual report and schedules used by small ILECs, and 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. The commission proposes amending §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; and §26.405, relating to Financial Need for Continued Support to implement these changes.

The commission also proposes amending §26.409, relating to Review of Texas Universal Service Fund Support Received by Competitive Eligible Telecommunications Providers by setting an expiration date for the provision of December 31, 2023, consistent with the requirements of PURA §56.023(s).

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by Friday, October 27, 2023. **Comments must be organized by rule section in sequential order, and each comment must clearly designate which section is being commented on.** The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed repeals and amendments. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 54589. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 54589.

Each set of comments should include a standalone executive summary as the last page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should include a bulleted list covering each substantive recommendation made in the comments.

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rules, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rules are in effect, the following statements will apply:

- (1) the proposed amendments and repeals will not create a government program and will not eliminate a government program;
- (2) implementation of the proposed amendments and repeals will not require the creation of new employee positions and will not require the elimination of existing employee positions;
- (3) implementation of the proposed amendments and repeals will not require an increase and will not require a decrease in future legislative appropriations to the agency;
- (4) the proposed amendments and repeals will not require an increase and will not require a decrease in fees paid to the agency;
- (5) the proposed amendments and repeals will create a new regulation;
- (6) the proposed amendments and repeals expand, limit, and repeal existing regulations;
- (7) the proposed amendments and repeals will not change the number of individuals subject to the rule's applicability; and
- (8) the proposed amendments and repeals will positively affect this state's economy.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed amendments and repeals. Accordingly, no

economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Analysis

The commission has determined that the proposed amendments and repeals will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Fiscal Impact on State and Local Government

Mr. Stephen Mendoza, Senior Rate Analyst, Tariff and Rate Analysis has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Mr. Mendoza has determined that for each year of the first five years the proposed amendments and repeals are in effect the public benefit anticipated as a result of enforcing the section will be enhanced clarity on rules applicable to modern technology and the repeal or amendment of rules that have become outdated. There will be no probable economic cost to persons required to comply with the rule under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

For each year of the first five years the proposed amendments and repeals are in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under subsection §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on the proposed rules in this project if requested in accordance with Texas Government Code §2001.029. A hearing request must indicate the rule sections for which the hearing is being requested. The request for a public hearing must be received by October 27, 2023. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Statutory Authority

The proposed repeals, amendments, and new rule are proposed for publication 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.

For rules relating to Customer Service and Protection under Chapter 26, Subchapter B §§26.21-26.37.

Amended §§26.30, 26.31, 26.32, and 26.34 are proposed under PURA §15.023, which authorizes the commission to impose an administrative penalty against a person regulated under PURA who violates PURA or a rule or order adopted under PURA; PURA §17.001, §17.003, and §17.004, and §64.001, and §64.004, which collectively authorize the commission to impose customer protection standards in the telecommunications market; PURA §17.051 which requires the commission to adopt rules relating to certification, registration, and reporting requirements for a certificated telecommunications utility, telecommunications utilities that are not dominant carriers, and pay telephone providers; PURA §17.052(3) and §64.052(3) which collectively authorize the commission to adopt and enforce rules for customer service and protection.

§26.30, relating to Complaints

Amended §26.30 is proposed under PURA §15.051, which concerns customer complaints for acts or omissions by a public utility in violation or claimed violation of a law for which the commission has jurisdiction.

§26.31, relating to Disclosures to Applicants and Customers

Amended §26.031 is proposed under PURA §64.004(a)(7) and (8), which respectively entitle buyers of telecommunications services to accuracy of billing and for bills to be presented in a clear, readable format and in easy-to-understand language.

§26.32, relating to Protection Against Unauthorized Billing Charges

Amended §26.32 is proposed under PURA §64.004(a)(1), which entitles buyers of telecommunications services to protection from fraudulent, unfair, misleading, deceptive, or anticompetitive practices, Subchapter D of Chapter 17 and 64 PURA §§17.151-17.158 and §§64.151-64.158 which establish customer protections against unauthorized charges.

§26.34, relating to Telephone Prepaid Calling Services

Amended §26.34 is proposed under PURA Chapter 15, Subchapter B §§15.021-15.0233, which generally authorizes the commission to enjoin, require compliance, and assess administrative penalties for violations of PURA by a public utility; PURA §55.253 which authorizes the commission to prescribe standards regarding the information a prepaid calling card company must disclose to customers in relation to the rates and terms of service for prepaid calling services offered in the State of Texas and provides the commission with all necessary jurisdiction to adopt rules under this section and to enforce those rules and this section.

For rules relating to Infrastructure and Reliability under Chapter 26, Subchapter C §§26.51-26.57.

Amended §§26.52, 26.53, 26.54, and 26.55 are proposed under PURA §55.001, which requires a public utility to furnish service, instrumentalities, and facilities that are safe, adequate, efficient, and reasonable; §55.002, relating to commission authority concerning standards in the regulation of telecommunications services; and §55.008, relating to improvements in service by a public utility.

§26.52, relating to Emergency Operations and §26.53, relating to Inspections and Tests

Amended §26.52 is proposed under PURA §55.002(1) and (2), which respectively authorize the commission to, on its own motion or on complaint and after reasonable notice and hearing, adopt just and reasonable standards, classifications, rules, or practices a public utility must follow in furnishing a service; adopt adequate and reasonable standards for measuring a condition, including quantity and quality, relating to the furnishing of a service;

§26.54, relating to Service Objectives and Performance Benchmarks) and §26.55, Monitoring of Service

Amended §26.54 is proposed under PURA §55.002(3) and (4) which respectively authorize the commission to, on its own motion or on complaint and after reasonable notice and hearing, adopt reasonable rules for examining, testing, and measuring a service; and adopt or approve reasonable rules, specifications, and standards to ensure the accuracy of equipment, including meters and instruments, used to measure a service.

§26.73, relating to Annual Earnings Reports

Amended §26.73 is proposed in accordance with the guidelines of the commission's evaluation of the reporting requirements of Chapter 26 published in Project 32460 and as required by SB 408 §13 (79R). Amended §26.73 is also proposed under PURA §52.207 which authorizes the commission to collect a report from a holder of a COA or SPCOA and maintain the confidentiality of competitive information contained in such reports; PURA §56.024 which authorizes the commission to require certain telecommunications provider to provide a report or information necessary to assess contributions and disbursements to the universal service fund and maintain the

confidentiality of such reports; and PURA §65.004 which authorizes the commission to collect and compile information from all telecommunication providers as necessary to evaluate the telecommunications market of this state and maintain the confidentiality of such information.

§26.79 relating to Equal Opportunity Reports

Amended §26.73 is proposed under PURA §52.256, which requires each telecommunications utility to submit an annual report to the commission and the legislature relating to its efforts to improve workforce diversity and contracting opportunities for small and historically underutilized businesses.

§26.80, relating to Annual Report on Historically Underutilized Businesses) and 26.85, relating to Report on Workforce Diversity and Other Business Practices

Amended §26.80 is proposed under PURA §12.252, which authorizes the commission to, after notice and hearing, require each utility subject to regulation under PURA to make an effort to overcome the underuse of historically underutilized businesses; and PURA §52.256 which requires each telecommunications utility to submit an annual report to the commission and the legislature relating to its efforts to improve workforce diversity and contracting opportunities for small and historically underutilized businesses.

§26.89, relating to Nondominant Carriers' Obligations Regarding Information on Rates and Services

Amended §26.89 is proposed under PURA §52.007, which authorizes a telecommunications provider that is not subject to rate of return regulation under Chapter 53 to take certain actions

relating to the telecommunication provider's tariffs, price lists, and customer service agreements and PURA §52.154 which prohibits the commission from imposing a burden on a nondominant telecommunications utility a greater regulatory burden than is imposed on a holder of a CCN serving the same area or a deregulated company under PURA §65.002 that meets certain criteria.

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

Amended §26.111 is proposed under PURA §52.154, which precludes the commission from adopting a rule or regulatory practice that would impose a greater burden on a nondominant telecommunications utility than is imposed on a holder of a certificate of convenience and necessity serving the same area or on certain deregulated incumbent local exchange carriers; PURA Chapter 54, Subchapter C §§54.101-54.105 and Subchapter D §§54.151-54.159, which respectively provide for standards relating to a certificate of operating authority service provider certificate of operating authority, including relevant limitations, eligibility and applications requirements, and the grant or denial of a certificate; and PURA §65.102, which specifies the requirements applicable to a deregulated ILEC that holds a certificate of operating authority.

§26.123, relating to Caller Identification Services

Amended §26.123 is proposed under PURA §§54.259, 54.260, and 54.261 which collectively ensure access by certificate holders to a third party's property to install or maintain equipment as necessary to provide telecommunications service. Specifically, amended §26.129 is proposed under PURA §54.259, which prohibits property owners from discriminating against a telecommunications utility or otherwise interfering with such a utility when accessing the property

owner's land when necessary for the provision of telecommunications service; PURA §54.260, which authorizes a property owner to establish reasonable conditions for a telecommunications utility's access to the property owner's land; and §54.261 which does not require a property owner to enter into a contract with a telecommunications utility to provide shared tenant services on a property.

§26.127, relating to Abbreviated Dialing Codes

Amended §26.127 is proposed under PURA §55.002(1) and (2), which respectively authorize the commission to, on its own motion or on complaint and after reasonable notice and hearing, adopt just and reasonable standards, classifications, rules, or practices a public utility must follow in furnishing a service; adopt adequate and reasonable standards for measuring a condition, including quantity and quality, relating to the furnishing of a service; *Use of N11 Codes and Other Abbreviated Dialing Arrangements*, Sixth Report and Order, CC Docket No. 92-105, FCC 05-59 (Mar. 14, 2005).

§26.128, relating to Telephone Directories

Amended §26.128 is proposed under PURA Chapter 55, Subchapter D §§55.201-204, relating to the terms and requirements of directory listings and assistance for directories published by telecommunications utilities and private publishers; PURA §56.156 which authorizes the commission to promote the Specialized Telecommunications Assistance Program by means of participation in events, advertisements, pamphlets, brochures, forms, pins, or other promotional items or efforts that provide contact information for persons interested in applying for a voucher under the program; and Tex. Bus. & Comm. Code §304.055 which requires a private for-profit

publisher of a residential telephone directory that is distributed to the public at minimal or no cost to include in the directory information established by the commission through which a person may request placement of a telephone number on the Texas no-call list or order a copy of the form to make that request.

§26.130, relating to Selection of Telecommunications Utilities

Amended §26.130 is proposed under PURA §17.102, PURA Chapter 55, Subchapter K §§55.301-55.308, and PURA Chapter 64, Subchapter C §§64.101-64.102, which require the commission to ensure that customers are protected from deceptive practices employed in obtaining authorizations of service and in the verification of change orders.

§26.171, relating to Small Incumbent Local Exchange Company Regulatory Flexibility

Amended §26.129 is proposed under PURA Chapter 53, Subchapter G §§53.301-308 which collectively prescribe and authorize certain procedures for the expedited review of telecommunications rates and services offered by small local exchange companies and cooperatives.

§26.175, relating to Reclassification of Telecommunications Services for Electric Incumbent Local Exchange Companies (ILECs)

Amended §26.175 is proposed under PURA §58.024, which authorizes the commission to reclassify telecommunications services and requires the commission to establish standards for such reclassification and PURA §58.051 which identifies which telecommunications services are basic network services, unless reclassified.

§26.207, relating to Form and Filing of Tariffs and §26.208, relating to General Tariff Procedures

Amended §26.207 and new §26.208 are proposed under PURA §14.052, which authorizes the commission to adopt and enforce rules governing practice and procedure before the commission and, as applicable, practice and procedure before the State Office of Administrative Hearings; PURA §52.058 which requires the commission to adopt rules and establish procedures relating to new or experimental services or promotional rates; PURA §52.051 which requires a public utility to file with the commission a tariff showing each rate subject to the commission's jurisdiction and in effect for a utility service, product, or commodity offered by the utility; PURA §52.058 also requires a public utility to file as part of its tariff each commission rule that relates to each rate of the utility, utility service, product, or commodity furnished by the utility; PURA Chapter 54, Subchapter C §§53.101-53.113 which establishes the general procedures for rate change proposed by a utility; PURA Chapter 58, Subchapter C §§58.051-58.063 which details the regulation and adjustment of rates for basic network services.

§26.209, relating to New and Experimental Services and §26.210, relating to Promotional Rates for Local Exchange Company Services

Amended §26.209 is proposed under PURA §52.058, which requires the commission to adopt rules and establish procedures for new or experimental services and promotional rates provided by ILECs.

§26.211, relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges

Amended §26.211 is proposed under PURA §52.054, which authorizes the commission to adopt rules or establish procedures applicable to ILECs to determine the level of competition in a specific telecommunications market or submarket and provide appropriate regulatory treatment to allow an incumbent local exchange company to respond to significant competitive challenges.

§26.214, relating to Long Run Incremental Cost (LRIC) Methodology for Services provided by Certain Incumbent Local Exchange Companies (ILECs)

Amended §26.214 is proposed under PURA §51.004, which requires a discount or other form of pricing flexibility to not be unreasonably preferential, prejudicial, discriminatory, predatory, or anticompetitive and establishes the presumption that a price set at or above the long run incremental cost of a service is not a predatory price; PURA §52.0583(b) which authorizes an ILEC to introduce new services and requires an ILEC to price each new service at or above the service's long run incremental cost; PURA §52.0584 authorizes an ILEC to exercise pricing and packaging flexibility for customer promotional offerings and requires an ILEC to price each regulated service offered separately or as part of a package at either the service's tariffed rate or at a rate not lower than the service's long run incremental cost.

§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

Amended §26.215 is proposed under PURA §52.053 which prohibits a rate established under Chapter 52 from being unreasonably preferential, prejudicial, or discriminatory, subsidized either directly or indirectly by a regulated monopoly service; or predatory or anticompetitive PURA §52.059 which authorizes the commission to adopt standards necessary to ensure that a rate established under Chapter 52 covers appropriate costs, as determined by the commission.

§26.221, relating to Applications to Establish or Increase Expanded Local Calling Service Surcharges

Amended §26.221 is proposed under PURA §55.024, which requires an incumbent local exchange company that provides mandatory two-way extended area service to impose a charge for that service; PURA §58.061 which exempts a charge permitted under PURA §55.024 from the requirements of PURA Chapter 58, Subchapter C §§58.051-58.063; and PURA §59.024 which exempts a charge permitted under PURA §55.024 from certain rate change requirements.

§26.224, relating to Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies

Amended §26.215 is proposed under PURA Chapter 58, Subchapter C §§58.051-063 which collectively prescribe requirements relating to basic network services offered by a company electing for incentive regulation under Chapter 58. Specifically, amended §26.215 is proposed under PURA §58.051, which classifies certain services as basic network services; PURA §58.052

which enumerates the regulatory authority for basic network services; and PURA §58.054, which requires an electing company to commit to not increase a rate for basic network service on or before the fourth anniversary of its election date; PURA §58.055, which authorizes an electing company to increase or decrease a rate for a basic network service during the company's four-year election period; PURA §58.056, which authorizes the commission or an electing company to proportionally adjust rates for services to reflect certain changes in Federal Communications Commission policy; PURA §58.057, which authorizes an electing company to adjust rates under certain conditions; PURA §58.058, which authorizes the commission, upon request by an electing company, to allow a rate group reclassification that results from access line growth; PURA §58.059, which authorizes an electing company to request and the commission to approve, a rate adjustment under PURA §§58.056, 58.057, or 58.058; and PURA §58.060 which authorizes an electing company to increase a rate for a basic network service after the cap period under certain conditions.

§26.272, relating to Interconnection

Amended §26.272 is proposed under PURA §52.001 which states that the public interest requires rules, policies, and principles to be formulated and applied to protect the public interest and to provide equal opportunity to each telecommunications utility in a competitive marketplace; PURA §60.124 which requires each telecommunications provider to maintain interoperable networks; and PURA §60.125 which requires telecommunications providers to negotiate network interconnectivity, charges and terms.

§26.276, relating to Unbundling

Amended §26.276 is proposed under PURA §60.021 which requires, at a minimum, an incumbent local exchange company to unbundle its network to the extent the Federal Communications Commission orders.

For rules relating to the Texas Universal Service Fund under Chapter 26, Subchapter P §§26.401-26.424.

Amended §§26.403, 26.404, 26.405, 26.407, 26.409, 26.414, 26.417, 26.418, and 26.419 are proposed under PURA §51.001(g), which establishes a policy to ensure that customers in all regions of this state, including low-income customers and customers in rural and high cost areas, have access to telecommunications and information services. PURA Chapter 56, Subchapter A §§56.001-56.002 which establishes general provisions applicable to Chapter 56 of PURA. PURA §56.021 which requires the commission to adopt and enforce rules requiring local exchange companies to establish a universal service fund; and PURA §56.023 which establishes the commission's powers and duties in relation to the administration of the universal service fund.

§26.417, relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds; §26.418, relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds, and §26.419, relating to Telecommunication Resale Providers' Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF) for Lifeline Service.

Amended §§26.417, 26.418, and 26.419 are proposed under PURA §56.023(1), which requires the commission, in a manner that assures reasonable rates for basic local telecommunications service, adopting eligibility criteria and review procedures, including a method for administrative review, the commission finds necessary to fund the universal service fund and make distributions from that fund; and PURA §56.023(2) which requires the commission to determine which telecommunications providers meet the eligibility criteria; PURA §55.015 which requires the commission to adopt rules relating to certain requirements of lifeline service and establishes certain requirements relating to the provision of lifeline service by certificated providers of local exchange telephone service.

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

Amended §26.433 is proposed under PURA §54.251, which requires a certificate holder to meet minimum quality of service standards, including standards for 911 service, as determined by the commission; PURA §58.051(a)(8) which establishes access for all residential and business end users to 911 service provided by a local authority and access to dual party relay service as a basic network service; PURA §58.051(b) which requires electing companies to offer each basic networked service as a separately tariffed service in addition to any packages or other pricing flexibility offerings that include those basic network services; PURA §60.021 which requires that at a minimum, an ILEC shall unbundle its network to the extent ordered by the Federal Communications Commission; PURA §60.022 which states that the commission may unbundle local exchange company services in addition to the unbundling required by PURA §60.021 after considering the public interest and competitive merits of further unbundling; PURA §60.023 which states that the commission may assign an unbundled component to the appropriate category of

services under Chapter 58 according to the purposes and intents of the categories; PURA §60.122 which grants the commission exclusive jurisdiction to determine rates and terms for interconnection for a holder of a certificate of convenience and necessity, a certificate of operating authority, or a service provider certificate of operating authority; PURA §60.124 which requires each telecommunications provider to maintain interoperable networks; PURA §64.051 which requires the commission to adopt rules relating to certification, registration, and reporting requirements of a certificated telecommunications utility, all telecommunications utilities that are not dominant carriers, and pay telephone providers; PURA §64.052 which establishes the scope of the rules under PURA §64.051; and PURA §64.053 which states the commission may require a telecommunications service provider to submit reports to the commission concerning any matter over which it has authority under PURA Chapter 64.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002; 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.

(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 ~~(complainant)~~ 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~~shall investigate the complaint and advise the complainant of the results of the investigation within 21 days of receipt of the complaint. A CTU ~~must~~shall 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~~shall conduct the supervisory review and ~~shall~~ 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~~shall inform customers of the right to receive these results in writing.
- (B) A complainant who is dissatisfied with a CTU's supervisory review ~~must~~shall be informed of:
- (i)-(ii) (No change.)
- (iii) the following contact information for the commission:

(I) Mailing Address: ~~PUCT~~~~Public Utility Commission of~~
~~Texas, Consumer~~~~Customer~~ Protection Division, P.O. Box
13326, Austin, Texas 78711-3326;

(II)-(V) (No change.)

~~(VI) Telecommunications Device for the Deaf (TTY): (512) 936-~~
~~7136; and~~

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

(b) **Complaints to the commission.** ~~The~~~~Notwithstanding anything to the contrary, the~~
commission may only review~~hear~~ 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) (No change.)

(B) Upon receipt of a complaint from the commission, a CTU must~~shall~~
investigate and advise the commission in writing of the results of its
investigation within ~~1521~~ days of the date the complaint was forwarded by
the commission.

(C) The commission will~~shall~~:

(i)-(iii) (No change.)

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

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

(ii) (No change.)

(E) The CTU ~~must~~shall 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~~shall 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.~~Protests regarding commission-approved rates or charges that require no further action by the CTU need not be recorded.~~

(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 in the commission's Procedural Rules,~~ §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~~under~~ Public Utility Regulatory Act (PURA) §52.154.
- (b) **Certificated telecommunications utilities (CTU).** The disclosure requirements of this subsection~~These disclosure requirements shall only~~ apply ~~only~~ to residential customers and business customers with five or fewer customer access lines.
- (1) **Promotional requirements.** Promotions, including ~~but not limited to~~ advertising and marketing, conducted by ~~any~~ CTU ~~must~~~~shall~~ comply with the following:
- (A) If any portion of a promotion is translated into another language, then all portions of the promotion ~~must~~~~shall~~ be translated into that language. Promotions containing a single informational line or sentence in another language to advise a person on~~persons~~ how to obtain the same promotional information in a different language are exempt from this requirement.
- (B) Promotions ~~must~~~~shall~~ not be fraudulent, unfair, misleading, deceptive, or anti-competitive as prohibited by federal and state law.
- (2) **Prior to acceptance of service.** ~~A~~~~Each~~ CTU ~~must~~~~shall~~ provide the following information to an applicant~~applicants~~ before the applicant accepts service~~any acceptance of service~~:
- (A)-(D) (No change.)

(E) disclosure of ~~any and~~ 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 ~~or not~~ the money is refundable;

(F)-(I) (No change.)

(3) **Terms and conditions of service.** A CTU ~~must~~shall 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~~customers ~~is~~are entitled to receive an additional copy of the terms and conditions of service free of charge from the CTU every calendar year~~once annually free of charge~~. Any contract offered by a CTU must include the terms and conditions of service ~~statement~~. A CTU ~~is prohibited from offering~~ may not offer a customer a contract or terms and conditions of service ~~that statement which~~ waives the customer's rights under federal or state law, or commission rule.

(A) The information ~~must~~shall be:

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

(ii)-(iii) (No change.)

(iv) provided in the same ~~language~~languages in which the CTU markets the service ~~to a customer~~.

(B) The following information ~~must~~shall be included:

(i) each rate~~all rates~~ and charge~~charges~~ as ~~it~~they will appear on the telephone bill;

- (ii) an itemization of each charge that~~any charges which~~ may be imposed on the customer, including ~~but not limited to,~~ charges for late payments and returned checks;
 - (iii) (No change.)
 - (iv) any applicable minimum contract service terms and ~~any~~ fees for cancellation or early termination;
 - (v) ~~any and~~ all money that must be paid prior to installation of new service or transfer of existing service to a new location and whether ~~or not~~ the money is refundable;
 - (vi)-(vii) (No change.)
 - (viii) the company's cancellation or early termination policy;
 - (ix) an operational~~a working~~ toll-free number for customer service~~inquiries~~; and
 - (x) the provider's legal business or~~"doing business as"~~ name used for providing telecommunications services in the state.
- (4) **Customer rights.** At the initiation of service, a~~A~~ CTU ~~must~~shall provide to a customer information regarding customer rights ~~to customers~~ in writing and free of charge ~~at the initiation of service~~.
- (A) The informational disclosures relating to customer protections required by~~information in~~ subparagraph (C) of this paragraph ~~must~~shall be:
- (i) sent to the new customer~~customers~~ before payment for a full bill is due;

- (ii) clearly labeled to indicate the customer protection disclosures contain information regarding it contains the customer rights;
 - (iii) provided in a readable format and written in plain, non-technical language; and
 - (iv) provided in the same language languages in which the CTU markets the service to a customer.
- (B) The CTU mustshall also provide:
- (i) the information in subparagraph (C) of this paragraph to each customercustomers at least every other year at no charge; or
 - (ii) a printed statement on the bill or a billing insert identifying wherethe location of the information in subparagraph (C) of this paragraph can be obtained. The statement mustshall be provided to each customercustomers every six months.
- (C) The following informational disclosures relating to customer protections must be provided by the CTUinformation shall be included:
- (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 whichhow a deposit and interest paid on deposits are is calculated, the interest paid on deposits, and the time frame and requirementsrequirement for return of the deposit to the customer, and any other terms and conditions related to deposits;

- (ii) the time period for payment of~~allowed to pay~~ outstanding bills without incurring a penalty and the amount and conditions under which a penalty~~penalties~~ may be applied to delinquent bills;
- (iii) the grounds for suspension ~~and/or~~ disconnection of service;
- (iv) the requirements a CTU must meet to suspend or disconnect service~~the steps that must be taken before a CTU may suspend and/or disconnect service;~~
- (v) the requirements a CTU must meet~~the steps~~ for resolving billing disputes ~~with the CTU~~ and how disputes affect suspension ~~and/or~~ disconnection of service;
- (vi) information on alternative payment plans offered by the CTU, including ~~but not limited to,~~ payment arrangements and deferred payment plans. A CTU must provide to each customer a statement that the~~as well as a statement that a~~ customer has the right to request these alternative payment plans;
- (vii) the requirements~~the steps necessary~~ to have the customer's service restored ~~and/or~~ reconnected after involuntary suspension or disconnection;
- (viii) (No change.)
- (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~~Public Utility Commission of Texas, ~~Consumer~~Customer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or in Texas (toll-free) 1-888-782-8477, ~~fax (512) 936-7003~~, e-mail address: customer@puc.texas.gov, Internet address: www.puc.texas.gov, ~~TTY (512) 936-7136~~, and Relay Texas (toll-free) 1-800-735-2989, ~~must~~shall accompany this information;
- (xi) the hours, addresses, and telephone numbers of each CTU ~~office~~offices where bills may be paid and customer service information may be obtained, or a toll-free number at which the customer may obtain ~~such~~this information;
- (xii) a toll-free telephone number or ~~the~~ equivalent, ~~(such as the use of wide area telephone service~~WATS or acceptance of collect calls,) that ~~a customer~~customers may call to report service problems or make billing inquiries;
- (xiii) a statement that each CTU ~~services~~services ~~is~~are 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) (No change.)

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

(xvi) how ~~a customer~~customers with ~~a~~ physical ~~disability~~disabilities, 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~~agencies and ~~the customer's~~their local phone service provider.

(5) **Notice of changes.** A CTU ~~must~~shall provide ~~each customer~~customers 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~~shall give ~~each~~the 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 ~~mandated regulatory changes~~.

(6) **Right of cancellation.**

(A) A CTU ~~must~~shall provide ~~each~~all of its residential ~~applicant~~applicants and ~~customer~~customers the right of rescission in accordance with applicable law.

(B) If a residential applicant or customer enrolls in a contract with a minimum duration ~~will incur an obligation~~ exceeding 31 days, a CTU ~~must~~shall 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~~shall offer the applicant or customer a right to cancel the contract without penalty or fee ~~of any kind~~ for a period of six ~~working~~business 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 ~~shall~~ apply to residential customers and business customers with five or fewer customer access lines.

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

- (A) information relating to ~~about~~ the DCTU's residential service ~~lowest-priced~~ alternatives, beginning with the lowest-priced ~~least-cost~~ option, and the range of service offerings available within ~~at~~ the applicant's service area ~~location~~ 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 ~~applicants~~ about the availability of Lifeline Services ~~service~~.
- (2) Customer rights.
- (A) If a DCTU provides ~~its customers with~~ the same information as required by subparagraph ~~subsection~~ (b)(4)(C) of this section in the telephone directories provided to each customer in accordance with ~~pursuant to~~ §26.128 of this title (relating to Telephone Directories), the DCTU must ~~shall~~ provide a printed statement on each customer's ~~the~~ bill or a billing insert identifying the location of the information within the telephone directory. The statement or billing insert must ~~shall~~ 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 ~~shall~~ 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 ~~shall~~ notify each customer ~~all customers~~ through a statement provided in plain ~~both~~ English and Spanish,

in the customer rights disclosures, that the information is available in Spanish from the DCTU, ~~both~~ by mail or from ~~and at~~ the DCTU's offices.

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

(i)-(v) (No change.)

~~(d) — Nondominant certificated telecommunications utility (NCTU) implementation.~~

~~NCTUs mustshall implement this section no later than March 1, 2001.~~

§26.32. Protection Against Unauthorized Billing Charges (“Cramming”).

- (a) **Purpose.** The provisions of this section are intended to ensure that ~~each customer~~
~~customers~~ in this state are 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)-(3) (No change.)
- (c) **Definition.** The term “customer,” when used in this section, ~~means~~~~shall mean~~ 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~~No service provider or billing agent must comply with this subsection before submitting~~shall submit~~ charges for any product or service for billing on a customer's telephone bill ~~before complying with all of the following requirements:~~

- (1) **Inform the customer.** The service provider offering the product or service ~~must~~shall thoroughly inform ~~each~~the customer of the product or service being offered, including each charge associated with~~all associated charges for~~ the product or service, and ~~must~~shall inform ~~each~~the 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~~shall obtain clear and explicit consent from the customer, verified in accordance with~~pursuant to~~ subsection (f) of this section, ~~from the customer~~ to obtain the product or service being offered and to have each charge~~the~~ associated with the service~~charges~~ appear on the customer's telephone bill. A record of the customer's verified consent ~~must~~shall 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~~shall provide ~~each~~the 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~~shall 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~~shall execute a written agreement with the billing telecommunications utility to bill for a product~~products~~ or services~~services~~ on the billing telecommunications utility's telephone bill. Record of this agreement ~~must~~shall be maintained by:

(A)-(B) (No change.)

(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~~shall 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~~pursuant to~~ 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~~customer~~ consent;

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

(C)-(D) (No change.)

- (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~~shall be limited to, without explanation, ~~to~~ the identification of:

(A)-(D) (No change.)

- (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~~shall~~, after sufficient inquiry, ~~to~~ ensure that the customer is authorized to order the product or service; and obtain~~obtain~~ the explicit ~~customer~~ 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 ~~pursuant to subsection~~ (d) of this section, verification of customer consent to an order for a product or service ~~must~~shall 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~~shall 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~~shall be provided the

option of using another form of verification ~~as an alternative to in lieu of~~ an electronically signed verification.

- (ii) The document ~~must~~shall be signed and dated by the customer. Any electronically signed verification ~~must~~shall include the customer disclosures required by the *Electronic Signatures in Global and National Commerce Act* ~~47 United States Code §7001(c)§101(e)~~.
- (iii) The document ~~must~~shall 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~~shall be translated into that language. Every document ~~must~~shall 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) (No change.)
- (ii) establish one or more toll-free telephone numbers exclusively for the purpose of verifying the ~~customer's~~customer consent of charges for the ~~product~~product(s) or ~~service~~service(s) so that the customer calling the toll-free ~~number~~number(s) will reach a voice response

unit or similar mechanism regarding the customer consent for the ~~product~~product(s) or ~~service~~service(s) and automatically records the ANI from the local switching system.

- (iii) Automated systems mustshall 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 mustshall be ~~in a~~ clear, and easy-to-understand, ~~slow, and deliberate manner~~ and mustshall contain the information required by paragraphs (1) and (2) of this subsection.
- (ii) The recording mustshall be ~~clear and~~clearly audible.
- (iii) The recording mustshall 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 mustshall 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 mustshall meet the following requirements:

- (i) Verification ~~must~~shall 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~~shall be recorded.
- (iii) The recorded conversation with a customer ~~must~~shall contain explicit customer consent to record the conversation, be in a clear, ~~and~~ easy-to-understand, ~~slow, and deliberate~~ manner and ~~must~~shall 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~~shall be ~~clear and~~clearly audible.
- (v) The independent third-party verification ~~must~~shall be conducted in the same language used in the sales transaction.
- (vi) Automated systems ~~must~~shall 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~~shall 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~~reason(s) for the inability of the sales agent to disconnect from the line after the third-party verification is initiated. The service provider ~~is~~shall be exempt from this requirement for a period of two years from the date the certification was filed with the commission;

(II) (No change.)

(III) The independent third party verification ~~must~~shall immediately terminate if the sales agent of an exempt service provider, ~~in accordance with subclause pursuant to sub~~clause (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~~shall:

(I)-(II) (No change.)

(III) operate in a location ~~that is~~ physically separate from the service provider or the service provider's marketing agent.

(ix) The recording ~~must~~shall 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~~shall 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) (No change.)
- (6) A record of the verification required by subsection (f) of this section ~~must~~shall 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~~provisioned within 60 calendar days from the date of customer consent:
 - (A)-(B) (No change.)
 - (2) Paragraphs (1)(A) and (B) of this subsection do not apply to a verification of consent relating to multi-line ~~and~~/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, ~~specified in~~ the agreement. The verified consent ~~must~~shall 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~~customer's telephone bill is charged for any product or service without proper customer verified consent in compliance with this section,

the telecommunications utility that billed the customer; ~~on its knowledge or notification of any unauthorized charge, must~~ promptly, but not later than 45 calendar days ~~upon becoming aware after the date of the knowledge or notification of~~ an unauthorized charge meet the following requirements:

(A) A billing telecommunications utility ~~must~~ shall:

(i)- (ii) (No change.)

(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~~ shall pay interest at an annual rate established by the commission ~~in accordance with~~ pursuant to §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~~ on the customer's request, provide the customer with all billing records under its control related to any unauthorized charge within 15 ~~working~~ business days after the date of the removal from the customer's telephone bill;

(v) (No change.)

(vi) maintain ~~on an ongoing basis, a rolling for at least 24 month~~ months ~~a~~ 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~~shall contain for each alleged unauthorized charge:

(I) (No change).

(II) ~~each~~the affected telephone ~~number~~number(s) and ~~address~~addresses;

(III)-(V) (No change.)

(B) A billing telecommunications utility ~~must~~shall not:

(i) (No change.)

(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~~shall 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~~shall:

(A) (No change.)

(B) for at least 24 months following the completion of ~~all 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~~shall contain:

(i) ~~each~~the affected telephone ~~number~~number(s) and ~~address~~addresses;

(iii)-(iv) (No change.)

(C) (No change.)

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

- (1) Each notice, as provided ~~under~~~~as set out in~~ paragraph (2) of this subsection, ~~must~~~~shall~~ 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~~~~shall~~ 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~~business 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 ~~with text telephones (TTY)~~ may contact the commission through Relay Texas at 1-800-735-2989~~at (512) 936-7136.~~

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.

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

- (A) Each billing telecommunications utility ~~must~~shall mail the notice as ~~provided under~~set out in 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~~In addition, each billing telecommunications utility ~~must~~shall send the notice to new customers at the time service is initiated ~~and upon customer~~on any customer's request.
- (B) Every telecommunications utility that prints its own telephone ~~directory~~directories ~~must~~shall print the notice in the white pages of ~~the directory~~such directories, in nine point print or larger, beginning with the first publication of the ~~directory~~directories after 60 calendar days following the effective date of this section. ~~Subsequently thereafter~~, 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~~in 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 ~~with text telephones (TTY)~~ may contact the commission through Relay Texas at 1-800-735-2989~~at (512) 936-7136~~.

- (5) Each billing telecommunications utility ~~must, shall~~ 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 as necessary to adequately inform the customer; however, the~~ commission may exempt a billing telecommunications utility from the requirement that the information be provided in Spanish upon an application ~~and a~~ showing that:
- (i) 10% or fewer of its customers are exclusively Spanish-speaking; and
 - (ii) a confirmation that the billing telecommunications utility will notify all customers through an addendum to the notice that states, a statement in plain both English and Spanish, ~~as an addendum to the notice,~~ 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 ~~all of~~ 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 ~~all of~~ 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~~Customer~~ Protection Division (CPD) against a service provider, billing agent or

billing telecommunications utility for any ~~reason~~~~reasons~~ related to the provisions of this section.

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

(A)-(C) (No change.)

(D) a copy of the most recent phone bill and any prior phone bill that ~~show~~~~shows~~ 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~~~~shall~~ 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~~~~shall~~ respond to CPD within ~~1521~~ calendar days after CPD forwards the complaint. The response ~~must~~~~shall~~ include, to the extent it is within the custody or control of the service provider, billing agent or billing telecommunications utility, the following:

(A)-(B) (No change.)

(k) **Compliance and enforcement.**

- (1) **Records of customer verifications.** A service provider, billing agent or billing telecommunications utility ~~must~~~~shall~~ 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~~~~shall~~ 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~~pursuant to subsection (j)(2)(A) of this section must establish a ~~verified~~valid authorized charge ~~in the manner prescribed by as defined 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 must~~shall 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~~pursuant to 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 set out in~~ Texas Government Code §2001.081, including, ~~but not limited to~~, 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~~ 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~~shall 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, thereby 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~~shall~~ coordinate its enforcement efforts regarding the prosecution of fraudulent, unfair, misleading, deceptive, and anticompetitive business practices with the Office of the Attorney General ~~in order 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~~shall disclose to customers ~~regarding~~about the rates and terms of service for prepaid calling services offered in this state.
- (b) **Application.** This section applies to any “telecommunications utility” as ~~that term is~~ defined ~~by~~in §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~~under 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~~The prepaid calling services company ~~is~~shall be 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~~services remain usable in accordance with the requirements of this section; and
 - (2) (No change.)
- (d) **Definitions.** The following terms used in this section ~~shall~~ have the following meanings, unless the context indicates otherwise:

(1)-(2) (No change.)

- (9) Surcharge -- any fee or cost charged against a prepaid calling services account in addition to a per-minute rate or billing increment, including ~~but not limited to~~ connection, payphone, and maintenance fees.

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

- (1) Billing increments ~~mustshall~~ be defined and disclosed in the prepaid calling services company's published tariffs or price list on file with the commission, ~~and~~ on any display at the point of sale, ~~as well as~~ 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 shall~~ not ~~be considered~~ completed calls and ~~mustshall~~ not be charged against the account.
- (3) A surcharge ~~mustmay~~ not be levied more than once on a given call.
- (4) Prepaid calling services companies ~~mustmay~~ 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 ~~mustshall~~ be disclosed at the time of purchase. Current international rates ~~mustshall~~ 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 as long as~~ 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~~shall keep internal records of changes to its international rates and ~~must~~shall provide customers with the appropriate international rate information through a toll-free telephone number. International prepaid calling services rates ~~must~~shall continue ~~to~~ 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~~customers the following call detail data information at no charge:

(A)-(E)(No change.)

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

- (7) Prepaid calling services companies ~~must~~shall 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 as long as all~~ the information ~~required by~~in 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) (No change.)
 - (ii) The maximum rate per minute ~~must~~shall be shown for local, intrastate, and interstate calls. International call prices ~~must~~shall 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~~shall 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~~shall be expressed in the same format ~~such as (i.e. a card whose value is expressed in minutes must~~shall 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~~shall clearly indicate that the company is providing the prepaid calling services;

(iii)-(iv) (No change.)

(2) **Information required at a point of sale.** All the following information ~~must~~shall 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 as long as all~~ the information in subparagraphs (A)-(I) of this paragraph below is printed in both languages.

(A) (No change.)

(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~~shall clearly indicate that the company is providing the prepaid calling card services;

(C)-(I) (No change.)

(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 ~~Public Utility Commission of Texas, Office of Customer Protection~~, P.O. Box 13326, Austin, Texas 78711-3326; phone: (512) 936-7120 or in Texas (toll-free) 1-888-782-8477; ~~fax: (512) 936-7003~~; e-mail address:

customer@puc.texas.gov; Internet address: www.puc.texas.gov; ~~TTY: (512) 936-7136~~; 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)-(2) (No change.)
- (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~~ business 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 ~~so~~ requests, in writing within ten working days of the original request. In the event a complaint cannot be resolved within ten ~~working~~ days of

the request, the prepaid calling services provider ~~must~~shall advise the complainant in writing of the status and subsequently complete the investigation within 21 ~~working~~ days of the original request.

- (j) **Requirements for refund of unused balances.** If a prepaid calling services company fails to provide ~~services~~services 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~~shall either refund the customer for ~~each~~any unused prepaid calling ~~services~~services or provide equivalent ~~services~~services.

- (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~~shall at least 30 days prior to the termination of operations:

(A)-(D) (No change.)

- (2) Within 24 hours after ceasing operations, the prepaid calling services company ~~must~~shall 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~~shall include the following:

(A)-(B) (No change.)

(l) **Date of compliance for prepaid calling card services companies.** ~~Prepaid~~All prepaid calling ~~services~~ offered for sale in the state of Texas and ~~each~~ prepaid calling services ~~company must~~companies shall 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 must~~shall order the company to take corrective action, as necessary, and the company may be subject to administrative penalties and other enforcement actions in accordance with PURA~~pursuant to the Public Utility Regulatory Act~~, Chapter 15.

(2) **Enforcement.** The commission ~~will must~~shall 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 ~~in order~~ 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~~shall contain ~~as a minimum~~adequate provisions for emergency power, including four hours of battery reserve without voltage falling below the level required for proper operation of all equipment. ~~It is also essential that all central offices have adequate provisions for emergency power.~~

(2) In central offices without installed emergency power facilities, there ~~must~~shall be a mobile power unit available ~~that~~which 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~~shall 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~~shall 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~~shall 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~~shall be monitored to determine if the service objectives in this chapter are met. This monitoring function ~~must~~shall include, ~~but not be limited to,~~ 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~~shall 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 ~~Each~~ DCTU ~~must provide~~shall advise the commission ~~of~~ the numbers assigned for these test terminations.

§26.54. Service Objectives and Performance Benchmarks.

- (a) **Applicability.** This section establishes service objectives ~~for that should be provided by~~ 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~~**The** 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~~**activities** 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~~**shall** make measurements to determine the level of service quality for each item included in this section.

(3) ~~Upon commission request, a~~**Each** DCTU ~~must~~**shall** provide the commission with the measurements and summaries for any of the ~~service or performance benchmarks provided by this section~~**items included herein on request of the commission.** Records of these measurements and summaries ~~must~~**shall** 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) — One party line service and voice band data.~~

~~(1) — One party line service will be made available to all subscribers of local exchange service upon request.~~

~~(2) — All open wire transmission media shall be replaced with more reliable and better quality transmission media by the end of 1998, unless otherwise exempted by the commission. Any utility that obtained an exemption from this requirement shall file a report with the commission on the status of its open wire replacement program by June 1, 2000, and if all open wire replacement is not complete by that date, every three months thereafter until the replacement program is complete.~~

~~(3) — All switched voice circuits shall be adequately designed and maintained to allow transmission of at least 14,400 bits of data per second when connected through an industry standard modem (ITU-T V.32bis or equivalent) or a facsimile machine (ITU-T V.17 or equivalent).~~

~~(be)~~ Each~~The~~ DCTU must~~shall~~ comply with the service quality objectives established below in providing the basic telecommunications service to its end-use customers and must.~~The~~ ~~DCTU shall~~ file its service quality performance report on a quarterly basis. The report must~~shall~~ include its monthly performance for each category of performance objectives~~objective~~ 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 ~~mustshall~~ include, at a minimum, details outlining how the ~~necessaryneeded~~ 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 ~~mustshall~~ 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 ~~mustshall~~ provide a detailed corrective action plan for such an exchangeexchanges or wire centereenters.
- (B) Ninety percent of the DCTU's service orders for regular service installations ~~mustshall~~ 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 and other services, installations, moves, or changes, but not any complex serviceservices. Performance Benchmark for Corrective Action: If the performance is below 90% in any exchange area for a period of three consecutive months the DCTU ~~mustshall~~ provide a detailed corrective action plan for such an exchangeexchanges or wire centereenters.

- (C) Ninety-nine percent of the DCTU's service orders for service installations ~~mustshall~~ 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 ~~mustshall~~ 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 ~~mustshall~~ be completed within 90 days.
- (E) Each DCTU ~~mustshall~~ establish and maintain installation time commitment guidelines for the various complex services contained in ~~the DCTU's its~~ 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 ~~mustshall~~ commence ~~bywith~~ either the date of application or the date on which the applicant qualifies for service, whichever is later.
- (G) The DCTU ~~mustshall~~ provide to the customer a ~~commitmentdue~~ date on which the requested installation or change ~~willshall~~ be made. If a customer requests that the ~~installation or change be performedwork be done~~ on a regular working day later than ~~the date proposedthat offered~~ by the DCTU, then the customer's requested date will~~shall~~ be the commitment date. If a premises visit is required, the DCTU ~~mustshall~~ schedule an appointment period with the customer for ~~the~~ morning or afternoon, not to exceed a four-hour time period, on the ~~commitmentdue~~ date. If the DCTU is unable to

keep the appointment, the DCTU ~~mustshall~~ 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'sDCTU~~ carrier representative ~~mustshall~~ 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 ~~mustshall~~ 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 ~~mustshall~~ 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 orderis one~~ not filled within 30 days after the customer has ~~submitted anmade~~ 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 ~~mustshould~~ be advised and told when the DCTU can fulfill the order. The number of held regrade orders ~~mustshall~~ 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,~~DCTUs shall~~ maintain adequate personnel to provide an average operator answering performance as follows ~~for each exchange on a monthly basis:~~
- (A) Eighty-five percent of toll and assistance operator calls answered within ten seconds, or average answer time must~~shall~~ 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~~shall~~ provide a detailed corrective action plan for such an exchange or wire center.
- (B) Ninety percent of repair service calls must~~shall~~ be answered within 20 seconds or average answer time must~~shall~~ 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~~shall~~ provide a detailed corrective action plan for such an exchange or wire center.
- (C) Eighty-five percent of directory assistance calls must~~shall~~ be answered within ten seconds or the average answer time must~~shall~~ 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~~shall~~ provide a detailed corrective action plan for such an exchange or wire center.

~~(D) — An “answer” means shall mean that the operator, interactive voice system, or representative, is ready to render assistance and/or ready to accept information necessary to process the call. An acknowledgment that the customer is waiting on the line shall not constitute an “answer.”~~

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

(3) **Local dial service.** Sufficient central office capacity and equipment ~~must~~shall be ~~utilized~~provided 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 and/or~~ busy hour complies ~~shall be acceptable as complying~~ with this requirement;

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

(C) for every switch that serves a customer~~customers~~, the availability factor for stored program controlled digital and analog switching facilities ~~must~~shall be 99.99%, or the total unscheduled outage for each switch ~~must~~shall 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, ~~for any exchange that falls below the established performance objective level,~~ must be submitted to the commission.

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

- (A) Each DCTU ~~must~~shall 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~~DCTUs' testing, record-keeping, and reporting purposes, ~~the DCTU is~~DCTUs are 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~~shall be 99.93%, or the total unscheduled outage ~~must~~shall not exceed 365 minutes per year.
- (C) ~~For any exchange that falls below the established performance objective level, a~~A report detailing the cause and proposed corrective action for the local dial service measures, ~~for any exchange that falls below the established performance objective level,~~ 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~~shall 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, ~~for any exchange that falls below the established performance objective level, must be submitted to the commission.~~

(6) **Customer trouble reports.**

(A) ~~A~~The DCTU that serves more than 10,000 access lines ~~must~~shall 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~~smaller~~ exchange for three consecutive months, the DCTU ~~must~~shall 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~~The DCTU that serves 10,000 or less access lines ~~must~~shall 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~~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 6.0% ~~, or (six per 100 access lines)~~ per exchange for three consecutive months, the DCTU ~~must~~shall provide a detailed corrective action plan for such ~~an~~ exchange or wire center.

(C) The DCTU ~~must~~shall provide to the customer a commitment ~~datetime~~ by which the trouble will be cleared. If a premises visit is required, the DCTU ~~must~~shall 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~~When the DCTU cannot keep an appointment, the DCTU ~~must~~shall 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~~shall 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~~shall be cleared within eight ~~working~~ hours, except where access to the customer's premises is required but ~~unavailable~~not available or where interruptions are caused by ~~a force majeure~~unavoidable casualties and acts of God 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 ~~mustshall~~ provide a detailed corrective action plan for such an exchange or wire center.

- (E) Each DCTU ~~mustshall~~ establish procedures to ~~ensureinsure~~ 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 ~~mustshall~~ provide a detailed corrective action plan for such an exchange or wire center.

- (7) **Transmission requirements.** All voice-grade trunk facilities ~~mustshall~~ conform to accepted transmission design factors and ~~mustshall~~ 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 ~~mustshall~~ be provided by the DCTU, ~~in order~~ 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 ~~from~~ two to ten decibels loss at 1000+20 hertz and no more than 30 decibels above reference noise level ~~(“C” message weighting)~~.

- (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” message weighting~~).
- (C) Subscriber lines. All newly constructed and rebuilt subscriber lines ~~mustshall~~ 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 ~~mustshall~~ be maintained so that transmission loss does not exceed ten decibels. Subscriber lines ~~mustshall~~ in addition be constructed and maintained so that metallic noise does not exceed a C-message weighting of 30 decibels above reference noise level (~~“C” message weighting~~) on 90% of the lines. Metallic noise ~~mustshall~~ not exceed a C-message weighting of 35 decibels above reference noise level (~~“C” message weighting~~) on any subscriber line.
- (D) Private Branch Exchange (PBX)~~PBX~~, key, and multiline trunk circuits. PBX, key, and multiline trunk circuits ~~mustshall~~ 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 ~~isshall-be~~ 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~~customer~~ facilities.

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

- (i) For switching offices, the noise level count ~~must shall~~ not exceed five pulses above the threshold in any continuous five minute period on 50% of test calls. The reference noise level threshold ~~must shall~~ 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 shall~~ 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 shall~~ be less than 54 ~~dBrnC at a zero transmission level point (dBrnC0)~~ dBrnC0 for voice frequency trunks, and 62 ~~dBrnC0dBrnC0~~ for digital trunks.
- (iii) For loop facilities, the noise level count ~~must shall~~ not exceed 15 pulses above the threshold in any continuous 15 minute period on any loop. The reference noise level threshold ~~must shall~~ be less than 59 dBrnC when measured at ~~the~~ central office-~~(CO)~~, or referred to ~~the central officeCO~~ through 1004 Hz loss.

§26.55. Monitoring of Service. (REPEALED)

§26.73. Annual Earnings Report.

- (a) Each utility ~~must~~shall 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~~shall report information related to the most recent calendar year as specified in the instructions to the report.
- (2) Each utility ~~must~~shall file ~~a copy~~three copies of the commission-prescribed earnings report with the commission ~~and shall electronically transmit one copy of the report~~ no later than May 15th of each year.
- (3) (No change.)
- (b) In addition to the utilities required to file under subsection (a) of this section, a telecommunications provider ~~must~~shall file with the commission the provider's annual earnings report if the provider:
- (1)-(3) (No change.)
- (c) (No change.)

§26.78. State Agency Utility Account Information. (REPEALED)

§26.79. Equal Opportunity Reports.

- (a) (No change.)
- (b) The term “minority group members,” when used within this section, ~~mustshall~~ include only members of the following groups:
 - (1)-(5) (No change.)
- (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.) ~~mustshall~~ file ~~a copy~~~~copies~~ of such completed ~~forms~~~~form~~ with the commission. If such ~~a~~ form submitted by a multi-jurisdictional utility does not indicate Texas-specific numbers, the utility ~~mustshall~~ 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 ~~mustshall~~ 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) (No change.)

- (e) Any utility filing with the commission any documents described in subsections (c) and (d) of this section ~~must~~shall file ~~a copy~~four copies of such documents with the ~~commission~~commission's filing clerk under the project number assigned ~~by the Public Utility Commission's Central Records Office~~ for that year's filings. Utilities ~~may~~shall 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~~pursuant to §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 ~~deregulated~~ company that holds a certificate of operating authority, a company that holds a service provider certificate of operating authority, a registered interexchange carrier, or ~~to~~ an exempt carrier that meets the criteria of~~under~~ Public Utility Regulatory Act (PURA) §52.154.
- (b) In this section, “historically underutilized business” has the same meaning as defined by~~in~~ Title 10, Subtitle D, Chapter 2161 of the Texas Government Code, ~~§481.191, as it may be amended.~~
- (c) Every utility ~~must~~shall report its use of historically underutilized businesses (HUBs) to the commission on ~~the~~ form ~~prescribed~~approved by the commission. A utility may submit the report ~~on paper, physically~~ or digitally in ~~on paper and on a diskette (in Lotus 1-2-3 (*utility name.wk*) or Microsoft Excel (*utility name.xls) format).~~
- (1) Each small local exchange company and telephone cooperative utility ~~must~~shall 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 ~~Small Utilities HUB Report form.~~
- (2) Every utility other than those specified in paragraph (1) of this subsection, ~~must~~shall 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~~Large Utilities HUB Report form.~~

- (3) Each utility ~~that reports~~~~wishing to report~~ indirect HUB procurements or HUB procurements made by a contractor of the utility report such procurements separately on the form prescribed by the commission ~~may use the Supplemental HUB report form.~~
 - (4) Each utility ~~must~~~~shall~~ 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~~~~shall~~ 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 ~~considered~~ a Texas vendor if the vendor is physically located ~~its physical location is situated~~ within the boundaries of Texas.
 - (6) Each utility ~~must~~~~shall~~ also file any other information necessary to accurately assess the utility's~~documents it believes appropriate to convey an accurate impression of~~ ~~its~~ use of HUBs.
- (d) A utility is prohibited from utilizing information gathered to comply with this section~~This section may not be used~~ 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, ~~either public or private.~~

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

- (a) **Purpose.** This section establishes annual reporting requirements for a telecommunications utility~~telecommunications utilities~~ 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~~pursuant to~~ the Public Utility Regulatory Act (PURA) §52.256(b).
- (b) **Application.** This section applies to a telecommunications utility~~all telecommunications utilities~~, as defined in PURA §51.002(11), doing business in the State of Texas. This section does not apply to a ~~deregulated~~ company that holds a certificate of operating authority, a company that holds a service provider certificate of operating authority, a registered interexchange carrier, or ~~to~~ an exempt carrier that meets the criteria of~~under~~ PURA §52.154.
- (c) **Terminology.** In this section, “small business” and “historically underutilized business” have the meaning~~meanings~~ 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~~shall~~ be filed annually with the commission. The report must~~shall~~ 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 telecommunications utility that was not operational on January 1, 2000, and is required to file in accordance with~~pursuant to~~ PURA §52.256(b), must~~shall~~

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~~shall 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~~utilities ~~must~~shall obtain the project number by contacting Central Records. A copy of the report ~~must~~shall 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~~pursuant to this section ~~must~~may be filed using the Workforce and Supplier Contracting Diversity form or an alternative format prescribed by the commission and ~~must~~shall contain ~~at a minimum~~ 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~~pursuant to~~ §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~~pursuant to~~ PURA §52.256(b), including:

(A)-(B) (No change.)

(3)-(5) (No change.)

(g)-(i) (No change.)

§26.87. Infrastructure Reports. (REPEALED)

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

- (a) **Filing of tariff by nondominant carrier.** ~~All~~ nondominant ~~carrier~~~~carriers~~, including ~~a~~ nondominant carrier~~those~~ holding a certificate of operating authority or a service provider certificate of operating authority, may, but ~~is~~~~are~~ not required to file with the commission the information ~~listed under~~~~set forth in~~ paragraphs (1)-(3) of this subsection. If filed, such~~This~~ information must~~shall~~ be updated and kept current at all times.
- (1) A description of ~~each type~~~~the type(s)~~ of telecommunication~~communications~~ 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 ~~and~~/or terminated. If a service is provided statewide, the carrier must specify either origination or termination~~If service is provided statewide, either origination or termination, the carrier shall so state; and~~
- (3) A tariff, schedule, or list showing each rate~~all recurring and nonrecurring rates~~ for each service, product, or commodity offered by the nondominant carrier~~provided. A tariff must include 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~~filed~~

~~pursuant to~~ subsection (a) of this section ~~must~~~~shall~~ file with the commission a letter informing the commission that no changes have occurred. An uncertificated nondominant carrier ~~that fails~~~~failing~~ to file either this letter or the updates ~~specified by~~~~pursuant to~~ subsection (a) of this section during the 12-month period ending ~~on~~ June 30 ~~will~~~~may~~ no longer be ~~considered to 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) of this section and subsection (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.

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

(d) **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~~tariffs, price lists, or customer service agreements governing~~ 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~~it~~:
 - (A) files written notice of the withdrawal with the commission; and
 - (B) notifies each of its customers of the withdrawal and posts each the current and applicable tariff, price list, or customer service agreement~~tariffs, price lists, or generic customer service agreements~~ 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 ~~service's~~ 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~~persons and entities 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 ~~the~~ common control with~~;~~ the person specified.
- (2) Annual Report -- A report that includes at a minimum, ~~but is not limited to~~ 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 ~~(primary and secondary)~~ and operation and policy migration contacts ~~(operation and policy)~~ which is submitted to the commission every calendar year~~on an annual basis~~. Each provided contact ~~must~~shall 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.

- (43) 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.
- (54) Executive officer -- When used ~~in~~with 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.
- (65) 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.
- (76) Permanent employee -- An individual that is fully integrated into the certificate holder's business. A consultant is not a permanent employee.
- (87) Person -- ~~An~~Includes an individual and any business entity, including ~~and without limitation,~~ 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.
- (98) Principal -- A person or member of a group of persons that controls the person in question.
- (109) Shareholder -- As context indicates and the applicable business entity requires, The ~~term shareholder means~~ the legal or beneficial owner of any of the equity in any business entity, including ~~without limitation and as the context and applicable~~

~~business entity requires~~, stockholders of corporations, members of limited liability companies and partners of partnerships.

(c) **Ineligibility for certification.**

- (1) (No change.)
- (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 ~~(relating to Application for Certificate)~~.
- (3) An applicant is ineligible for ~~an~~ SPCOA if the applicant, and affiliates of the applicant together with its affiliates, in the aggregate have ~~has~~ more than 6.0% of the total intrastate switched access minutes of use as measured for the most recent 12-month period.
- (4) (No change.)

(d) **Application for COA or SPCOA certification.** A person is prohibited from providing local exchange telephone service, basic local telecommunications service, or switched access service unless the person 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 ~~person applying~~ for COA or SPCOA certification must demonstrate ~~theirs~~ capability of complying with this section. An applicant ~~A person~~ who

~~obtains~~~~operates as~~ a COA or SPCOA, or who receives a certificate under this section ~~must~~~~shall~~ maintain compliance with this section.

- (2) An application ~~for certification~~~~must~~~~shall~~ be made on ~~the form prescribed~~~~a form approved~~ by the commission, verified by oath or affirmation, and signed by an executive officer of the applicant.
- (~~43~~) Except where good cause exists to extend the time for review, the presiding officer ~~must~~~~shall~~ 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 ~~to the applicant's right to reapply~~.
- (~~54~~) While an application ~~for a certificate or certification amendment~~ is pending, an applicant ~~must~~~~shall~~ inform the commission of any material change in the information provided in the application within five working days of any such change.
- (~~65~~) Except where good cause exists to extend the time for review, the ~~presiding officer~~~~commission~~ will enter an order approving, rejecting, or approving with modifications, ~~ana new or amendment~~ application within 60 days of the filing of the application.
- (~~76~~) While an application ~~for COA or SPCOA certification or certification amendment~~ is pending, an applicant ~~must~~~~shall~~ respond to ~~anya~~ 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 that it is eligible under subsection (c) of this section, has the technical and financial qualifications required by specified in 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 mustshall consider whether the applicant has satisfactorily provided all of the information required under this section in the application for a COA or SPCOA.

(f) **Financial requirements.** To obtain COA or SPCOA certification, an applicant must demonstrate the 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 mustshall 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, but is not limited to, dividend

distributions, redemptions and repurchases of equity securities, ~~or loans,~~ or loan repayments to shareholders or affiliates.

- (3) Shareholders' equity ~~must~~shall be documented by an audited or unaudited balance sheet for the applicant's most recent quarter. The audited balance sheet ~~must~~shall include the independent auditor's report. The unaudited balance sheet ~~must~~shall 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) (No change.)

- (2) To support technical qualification, ~~an applicant~~applicants 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~~shall include the following in its initial application for COA or SPCOA certification:

- (A) (No change.)

- (i) The complaint history, disciplinary record, and compliance record ~~must~~shall 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~~shall ~~include~~ 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~~applicant's~~ and the principals and affiliates of the applicant~~applicant's principals' and affiliates' complaint history, disciplinary record, and compliance record.~~
- (iii) (No change.)

- (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 ~~applicant's principals~~ 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 ~~applicant's principals~~ 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 must~~shall 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)-(B) (No change.)
 - (C) Certification ~~or~~ /file number; and
 - (D) (No change.)
 - (2) Business names ~~must~~shall 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)~~Certificated Telecommunications Provider (CTP)~~.
 - (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~~shall 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 ~~in order~~ 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 by the commission shall~~ file an application to amend ~~the~~ COA or an SPCOA certificate in a commission approved format ~~in order~~ to:

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

(i) Name change amendments may be granted via ~~on an~~ administrative approval basis, 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 shall~~ notify the applicant that the requested name is prohibited for use ~~may not be used~~ by the applicant. ~~An~~The applicant ~~is will be~~ required to provide at least one suitable name or the amendment will may be denied by the presiding officer.

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

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

(E) Discontinuation of service and relinquishment of certificate, or discontinuation of an optional serviceservices 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~~Exempt Carrier shall~~ provide the information in subclauses (I)-(III) of this clause for the discontinuation of ~~its~~ service and relinquishment of its certificate, or discontinuation of an optional service. 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~~Exempt Carrier.~~

(I)-(III)(No change.)

- (ii) A carrier that does not meet the criteria of clause (i) of this subparagraph must comply with~~For all other carriers, such an application is subject to~~ 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

~~commissioner~~ previously approved. If ~~the~~ commission staff cannot determine ~~make a determination of~~ continued compliance ~~with~~based on the applicable substantive rules ~~based on~~from the information provided on the abbreviated amendment application, then a full amendment application ~~must~~shall 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~~must~~shall~~ have ~~ten working~~10 business days to review the notice and determine whether a full amendment application will be required. If staff has not filed, within ~~ten working~~10 business 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~~shall include but not be limited to:

(A)-(B) (No change.)

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

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

(5) (No change.)

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

(1)-(2) (No change.)

- (k) **Renewal of certificates.** Each COA and SPCOA holder ~~must~~is required to 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, ~~the following year,~~ a renewal of its certification.

(1) The certification renewal ~~must include~~will consist of:

- (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~~The certification renewal ~~must~~shall 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~~st~~ of each reporting year to comply with paragraph (1) of this subsection. ~~Commission~~The commission staff will send three notices to each COA and SPCOA holder that has not submitted its certification renewal by June 1~~st~~. The first notice will be sent on or before July 1~~st~~, the second notice will be sent on or

before August 1~~st~~, and the third notice will be sent on or before September 1~~st~~. Failure to send any of these notices by commission staff~~the commission~~ or failure to receive any of these notices by a COA or SPCOA holder must~~shall~~ not affect the requirement to renew a certificate under this section by October 1~~st~~ of the renewal period.

- (4) Failure to timely file the annual renewal required in paragraph (1) of this subsection on or before October 1~~st~~ 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 are found to be invalid are no longer in compliance with PURA §54.001.~~

- ~~(56)~~ 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.

- ~~(67)~~ A certificate holder whose COA or SPCOA certificate is invalid~~no longer valid~~ 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~~using~~ the annual report to the extent required by PURA and this title. At a minimum, the COA or SPCOA holder must~~shall~~ 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~~shall submit the required information in the manner established by the commission.

- (2) (No change.)
- (3) When terminating or disconnecting service to another ~~CTUCTP~~, ~~a~~ COA ~~or an~~ and SPCOA ~~holder must~~holders shall file a copy of the termination ~~or~~ /disconnection notice with the commission not later than two ~~working~~business days after the notice is sent to the ~~CTUCTP~~. The service termination ~~or~~ /disconnection notice ~~must~~shall be filed ~~in~~under a project ~~number~~ established for that purpose.
- (4) COA and SPCOA holders ~~must~~shall 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~~the fifth business day 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 (e.g., Chapter 7, 11, or 13, and whether the bankruptcy is~~ voluntary or ~~involuntary~~not), the bankruptcy case number; and
 - (B) The number of affected customers, the type of service ~~being~~ provided to the affected customers, and the name of ~~each provider~~the provider(s) of last resort associated with the affected customers.

- (5) **Reports.**

(A) A certificate holder ~~must~~shall file all reports to the extent required by PURA and this title, including ~~but not limited to:~~ §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~~discontinuation of service~~ 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~~commission authorization to cease operations has been obtained~~. A COA or SPCOA holder that ceases operations and relinquishes its certification must ~~shall~~ comply with PURA §54.253 ~~(relating to Discontinuation of Service by Certain Certificate Holders)~~. This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier~~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, ~~and the Office of Public Utility Counsel (OPC).~~

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

- (B) The notification letter ~~must provide each customer~~shall give customers a minimum of 61 days of notice of termination of service, and the date of the termination of service ~~must~~shall be clearly stated in the notification letter.
 - (C) The notification letter ~~must inform each customer~~shall inform customers of the carrier of last resort or make other arrangements to provide service as approved by ~~each customer~~the customers.
- (2) A COA or SPCOA holder that intends to cease operations ~~must~~shall 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 ~~which shall~~ provide the following information:
- (A) Name, address, and phone number of the certificate holder;
 - (B) (No change.)
 - (C) The commission ~~control~~docket 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)-(F) (No change.)
- (3) All customer deposits and credits ~~must~~shall 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~~shall 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 services ~~must~~shall 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~~Exempt Carrier~~.

- (1) The COA or SPCOA holder ~~must~~shall file an application with the commission to discontinue optional services, which ~~must~~shall provide the following information:
- (A) Name, address, and phone number of the certificate holder;
 - (B) (No change.)
 - (C) The commission control~~docket~~ number in which the COA or SPCOA was granted;
 - (D)-(F)(No change.)
- (2) Notification to each customer receiving optional services is required, and must comply with the following requirements~~consisting of the following information~~:
- (A) The notification letter ~~must~~shall clearly state the intent of the certificate holder to cease an optional service and a copy of the letter ~~must~~shall be provided to the commission and OPUC~~OPC~~.
 - (B) The notification letter ~~must~~shall give customers a minimum of 61 days of notice of the discontinuation of optional services.

- (3) All customer deposits and credits ~~associated~~affiliated with ~~at~~the discontinued optional ~~service must~~services—shall be returned within 30 days of the discontinuation.
- (4) The certificate holder ~~must~~shall maintain the optional services until it has obtained commission authorization to cease the optional services.
- (5) If the amendment 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 an SPCOA.
- (o) **Revocation or suspension.** A certificate granted ~~in accordance with~~pursuant to 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 ~~to operate as a COA or SPCOA~~. A suspension of a COA or an SPCOA certificate requires the cessation of all ~~COA or SPCOA~~ 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 ~~all COA or SPCOA~~ activities in the state of Texas; that require a COA or an SPCOA in accordance with ~~pursuant to~~ commission order. The commission may also impose an administrative penalty on a person for a violation of PURA or commission substantive rules~~violations of law within its jurisdiction~~. Commission~~The commission~~ staff or any affected person may bring a complaint seeking to amend, suspend, or revoke a COA or an SPCOA~~SPCOA's~~

certificate. Grounds for initiating an investigation that may result in the suspension or revocation include the following:

(1)-(2) (No change.)

(3) ~~Failure~~Bankruptcy, insolvency, 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)-(16) (No change.)

§26.123. Caller Identification Services

(a) (No change.)

(b) **Caller identification services (“caller ID”).**

(1) **Application.** This subsection ~~does not~~shall not be construed to apply to:

(A)-(E)(No change.)

(2) **Caller ID blocking.**

(A) Per-call blocking. All providers of caller ID ~~must~~shall 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) (No change.)

(ii) All providers of caller ID, ~~except with the exception of~~ commercial mobile radio service providers, ~~must~~shall 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~~shall 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~~shall notify the customer by mail of the effective date that per-line blocking will be instituted.

(II)-(III) (No change.)

(iii) (No change.)

- (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~~shall 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~~shall report such failure to the commission by contacting the commission liaison to the panel. A reasonable effort ~~must~~shall 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~~shall 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.

~~(5) **Caller ID Consumer Education Panel.** The Caller ID Consumer Education Panel shall consist of one person appointed by the Governor, one person appointed by the chair of the commission, after consultation with the Texas Council on Family~~

~~Violence, and one person appointed by the Public Counsel of the Office of Public Utility Counsel. A commission staff member shall serve as liaison between the panel and the commission.~~

~~(A) — Role of the Caller ID Consumer Education Panel. The panel shall meet at least quarterly to:~~

~~(i) — review the level of effort and effectiveness of consumer education materials;~~

~~(ii) — investigate whether educational materials are distributed in as effective a manner as marketing materials; and~~

~~(iii) — develop recommendations for the commission related to the safe use of caller ID services, promotion and preservation of privacy for both the called and calling customers, and efforts to decrease the likelihood of harm resulting from caller ID services.~~

~~(B) — Reporting. The panel shall file an annual report with the commission detailing its findings and recommendations pursuant to subparagraph (A) of this paragraph. The commission may implement the recommendations of the panel, as well as those of any interested party, to the extent consistent with the public interest.~~

~~(C) — Evaluation of the panel. The commission shall evaluate the panel annually. The evaluation shall be conducted by an evaluation team appointed by the executive director of the commission. The commission liaison, members of the panel, and any other commission employee who works either directly or indirectly with the panel shall not be eligible to serve on the evaluation~~

~~team. The evaluation team will report to the commission in open meeting each August of its findings regarding:~~

~~(i) the panel's work;~~

~~(ii) the panel's usefulness; and~~

~~(iii) if the panel is reimbursed for its costs by the state, the costs related to the panel's existence, including the cost of agency staff time spent in support of the panel's activities.~~

~~(D) Duration of the panel. The panel shall disband on September 1, 1999, unless reauthorized by statute.~~

~~(E) Filing of caller ID materials. A provider of caller ID services shall provide all existing caller ID materials used as well as all future materials (when they become available) as follows:~~

~~(i) One copy of all such material shall be mailed to each member of the panel.~~

~~(ii) Two copies of all such material shall be filed in Central Records under Project Number 14505.~~

(c) (No change.)

§26.127. Abbreviated Dialing Codes.

(a)-(c) (No change.)

(d) **211 service.**

(1) ~~**ApplicationScope and purpose.**~~ This subsection applies to the assignment, provision, and termination of 211 service. ~~Through this subsection, the commission intends to enhance the ability of the public to access services that provide free information and referral to community resources in situations that are not immediately life endangering, but still represent a serious but less urgent threat to basic human needs and individuals' health or welfare.~~

(2) **Definitions.** The following words and terms, when used in this subsection, ~~must~~shall have the following meanings unless the context indicates otherwise:

(A)-(C) (No change.)

(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 ~~and~~/or to supply descriptive information about the agencies or organizations which offer services.

(E)-(G) (No change.)

(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 ~~canhas the ability to~~ access services providing free information and referrals regarding community service organizations.

(3) (No change.)

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

(A) (No change.)

(B) The 211 network ~~mustshall~~ 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, ~~and/or~~ caller anonymity.

(6) (No change.)

(e) **311 service.**

(1)-(2)(No change.)

(3) A ~~CTUcertificated telecommunications utility~~ must have a commission-approved application to provide 311 service.

(4) **Requirements of application by ~~CTUcertificated telecommunications utility~~.**

(A) Applications, tariffs, and notices filed under this subsection ~~mustshall~~ be written in plain language, ~~mustshall~~ contain sufficient detail to give customers, governmental entities, and other affected parties adequate notice

of the filing, and ~~mustshall~~ 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 ~~mustshall~~ 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'scertificated telecommunications utility'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 ~~mustshall~~ be approved.
 - (D) All applications for 311 service ~~mustshall~~ 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 ~~willshall~~ determine the appropriate level of notice to be provided and may require additional notice to the public.
- (A) The ~~CTU mustcertificated telecommunications utility shall~~ 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'scertificated telecommunications utility's~~ provision of 311 service. This copy of the proposed notice ~~mustshall~~ be filed with the

commission not later than ten days after the ~~CTU~~certificated telecommunications utility receives the 311 service request; and

- (B) The proposed notice ~~must~~shall 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~~Public Utility Commission’s Consumer~~Customer~~ Protection Division at (512) 936-7120 or toll free at (888) 782-8477. Hearing- and speech-impaired individuals ~~with text telephones (TTY)~~ may contact the commission through Relay Texas at 1-800-735-2989~~at (512) 936-7136.~~”

- (6) A ~~CTU is authorized to~~certificated telecommunications utility ~~may~~ provide 311 service only to governmental entities.
- (7) A 311 service request ~~must initiate~~shall start 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~~shall not be completed over the 911 network or use the 911 database.
- (9) The 311 network ~~must~~shall 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 ~~CTUcertificated-telecommunications-utility~~ 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 ~~CTUcertificated telecommunications-utility~~ uses ~~a Caller Identification service(Caller ID)-services~~ 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~~shall ~~have~~ 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~~shall ~~have~~ the authority to decide which governmental entity ~~must~~shall 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~~ must~~shall~~ consider the following factors in determining conflicting requests for 311 service:
- (A) the nature of the ~~services~~service(s), including ~~but not limited to~~ 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 ~~(i.e.,~~
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~~certificated~~
~~telecommunications utility shall~~ file a notice of termination with the commission
that contains:
- (A)-(B) (No change.)
- (14) The commission, after receiving the CTU's~~certificated telecommunications~~
~~utility'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) (No change.)
- (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 ~~referred to herein as TUFNG)~~ ~~pursuant~~
~~to~~ Chapter 251 of the Texas Utilities Code.
- (3) (No change.)
- (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 must shall not~~ be limited.

§26.128. Telephone Directories.

- (a) **Application.** The provisions of this section ~~applieshall apply~~ to all telephone directory providers to the extent outlined ~~byin~~ 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 ofunder~~ Public Utility Regulatory Act (PURA) §52.154. For purposes of this section, the term “a private for-profit publisher” ~~meanshall mean~~ a publisher, other than a telecommunications utility or its affiliate, of a telephone directory that contains residential listings and ~~that~~ is distributed to the public at minimal or no cost.
- (b) **Telephone directory requirements for all providers.** ~~AAny~~ private, for-profit publisher, and ~~any~~ telecommunications utility or ~~affiliate of a telecommunications utilityits affiliate~~ that publishes a residential telephone directory ~~mustshall~~ comply with the following requirements:
- (1) A telephone directory ~~mustshall~~ contain a listing of each toll-free and local telephone number for each of the following:

(A)-(C) (No change.)
 - (2) The directory ~~mustshall~~ include the information required in paragraph (1) of this subsection from the most current edition of the Capitol Complex Telephone System Directory~~State of Texas Telephone Directory~~ prepared and issued by the Department of Information ~~ResourcesServices~~ and those modifications to the Capitol Complex Telephone System Directory~~State of Texas Telephone Directory~~ that are available upon request from the Department of Information Resources.

- (3) All publishers ~~must~~shall contact the Department of Information Resources in writing to determine which issue of the Capitol Complex Telephone System Directory~~State of Texas Telephone Directory~~ is most current and to obtain the modifications referred to in paragraph (2) of this subsection. The Department of Information Resources ~~will~~shall 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~~shall 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~~shall be labeled "GOVERNMENT OFFICES - STATE" in 24 point type;
 - (C) ~~must~~shall 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~~shall be included in the directory at no cost to the agency or official;
 - (E) ~~must comply~~shall be in compliance with the categorization developed by the Records Management Interagency Coordinating Council. The categorization shall be available upon request from the Department of Information Resources. The listings ~~must~~shall be arranged in the following manner~~two ways~~:
- (i) alphabetically by subject matter of state agencies; ~~or~~and
 - (ii) alphabetically by agency and public service name;

(F) ~~must~~shall include the telephone number for state of Texas government information: (512) 463-4630.~~(No change.)~~

(c) **Private for-profit publisher.** Any private for-profit publisher that publishes a residential telephone directory ~~must~~shall 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~~shall 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~~shall 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 ~~Assistive and Rehabilitative Services,~~ ~~the Office for Deaf and Hard of Hearing~~ Services at (512) 438-4880~~407-3250.~~

~~(Voice) or (512) 407-3251 (TTY)~~ 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>~~www.dars.state.tx.us/dhhs/~~. 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 ~~any~~ telecommunications utility found to be dominant as to local exchange telephone service or ~~its~~ affiliate of a telecommunications utility that publishes a directory on behalf of ~~thesuch~~ telecommunications utility.

(1) **Annual publication.** Telephone directories ~~mustshall~~ be published every calendar year~~annually~~. Except for customers who request that information be unlisted, directories ~~mustshall~~ 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 ~~mustshall~~ 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 ~~mustshall~~ 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~~shall 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~~shall 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~~shall be furnished to the commission. A telecommunications utility ~~must~~shall also distribute copies of directories ~~in accordance with~~pursuant to any agreement reached with another CTU.

(3)-(4) (No change.)

~~(5) — **Sample long distance rates.** It shall also contain a section setting out sample long distance rates within the long distance service area, if any, on the network of the telecommunications utility for which the directory is issued, applicable at the time the directory is compiled for publication, with a clear statement that the published rates are effective as of the date of compilation.~~

~~(56)~~ **Customer addresses.** At the customer's ~~election~~option the directory ~~must~~shall list either the customer's street address, a post office box number, or no address. A charge ~~may~~can 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/or any other law applicable section in this title.~~ ~~The applicability~~

~~of each of the sections referenced in paragraphs (1)–(4) of this subsection is unaffected by the inclusion of the reference in this subsection.~~

(1)-(4) (No change.)

(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~~shall 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 in order that the directory assistance operators can provide the requested telephone numbers based on customer names and addresses.~~

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

(3) **Disconnected numbers.** Disconnected residence telephone numbers ~~must~~shall not be reassigned for 30 days and disconnected business numbers ~~must~~shall 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~~shall be changed at no charge. If the incorrect number is not a working number and is a usable number, the customer's number ~~must~~shall 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~~shall 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," all "telecommunications utilities," 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 which is addressed by in §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 ~~must~~shall have the following meanings unless the context indicates otherwise:

(1) (No change).

(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 ~~and~~ or telecommunications utilities.

(3)-(5) (No change.)

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

(1) **Changes by a telecommunications utility.** ~~A~~No telecommunications utility is prohibited from submitting or executingshall submit or execute 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~~line(s) 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, ~~relating to "Letters of Agency."~~ 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~~shall be provided the option of using another authorization method as an alternative to~~in lieu of~~ 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~~The submitting telecommunications utility must:

- (i) (No change.)
 - (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~~number(s) 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~~shall be given to an appropriately qualified and independent third party that obtains appropriate verification data including, at a minimum, ~~but not limited to,~~ 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~~shall be electronically recorded ~~in their entirety~~ on audio tape, a wave sound file, or other recording device that is compatible with the commission's equipment.

- (iii) The recordings ~~must~~shall be dated and include clear and conspicuous confirmation that the customer authorized the change in telephone service provider.
- (iv) The third party verification ~~must~~shall 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(s) of the~~ name of each telecommunications ~~utility~~utilities affected by the change ~~but~~ (not including the name of the displaced carrier), ~~each~~the telephone ~~number~~number(s) to be switched, and the type of service involved. The third party verifier ~~must~~shall 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~~shall be conducted in the same language used in the sales transaction.
- (vi) Automated systems ~~must~~shall 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~~shall 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~~~~the reason(s)~~ for the inability of the sales agent to drop off the line after the third party verification is initiated. ~~A~~The carrier ~~is~~~~shall~~ ~~be~~ 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~~~~utilities~~ that ~~seeks~~~~wish~~ to extend ~~the~~~~their~~ exemption provided under subclause (I) of this clause from 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~~~~shall~~ 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~~~~shall~~:

(I)-(III)(No change.)

(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~~shall 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~~shall use a letter of agency (LOA) as specified in this subsection:

- (1) The LOA ~~must~~shall 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~~shall include the consumer disclosures required by the *Electronic Signatures in Global and National Commerce Act* 47 United States Code §7001(c)~~§101(e)~~.
- (2) The LOA ~~must~~shall 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 ~~mustshall~~ not contain any promotional language or material but ~~mustshall~~ 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 ~~mustshall~~ be clearly legible, printed in a text not smaller than 12-point type, and ~~mustshall~~ contain clear and unambiguous language that includes and confirms:
- (i)–(ii) (No change.)
- (iii) the name of the new telecommunications utility and that the customer designates ~~(insert name of~~ 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 ~~mustshall~~ contain separate

statements regarding those choices, although a separate LOA for each service is not required;

(v) (No change.)

(vi) appropriate verification data, including, at a minimum, ~~but not limited to,~~ 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~~shall 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~~shall 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 the~~ telephone ~~number~~~~number(s)~~ listed above.

Signed: _____ Date _____

- (4) The LOA ~~must~~~~shall~~ not require or suggest that a customer take some action ~~in order~~ 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~~~~shall~~ 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~~~~shall~~ 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~~shall 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~~shall direct the customer to contact the Public Utility Commission of Texas for resolution of the complaint.
- (3) The alleged unauthorized telecommunications utility ~~must~~shall remove all unpaid charges pending a determination of whether an unauthorized change occurred.
- (4) (No change.)
- (5) The alleged unauthorized telecommunications utility ~~must~~shall take all actions within its control to facilitate the customer's prompt return to the original telecommunications utility within three ~~working~~business days of the customer's request.
- (6) The alleged unauthorized telecommunications utility ~~must~~shall 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~~shall:

- (A) take all actions within its control to facilitate the customer's prompt return to the original telecommunications utility within three ~~working~~business days of the customer's request;
- (A) take all actions within its control to facilitate the customer's prompt return to the original telecommunications utility within three ~~working~~business days of the customer's request;
- (B) pay all charges associated with returning the customer to the original telecommunications utility within five ~~working~~business 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~~business days of the customer's request;
- (D) pay, within 30 ~~working~~business 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~~business days of the customer's request:
 - (i) any amount paid by the customer for charges incurred during the first 30 ~~calendar~~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)-(G) (No change.)

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

- (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~~business 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~~on 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) (No change.)
 - (ii) ~~each~~the telephone ~~number~~number(s) affected by the unauthorized change;
 - (iii)(iv)(No change.)
- (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 mustshall 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 mustshall contain the name, address and telephone numbers where a customer can contact the telecommunications utility.
- (3) **Customer notice.** The notice mustshall 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 workingbusiness 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 workingbusiness 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 ~~workingbusiness~~ 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 ~~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, ~~fax: (512) 936-7003~~, e-mail address: customer@puc.texas.gov~~customer@puc.state.tx.us~~. Hearing and speech-impaired individuals ~~with text telephones (TTY)~~ may contact the commission through Relay Texas ~~at (512) 936-7136~~.

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) (No change.)

(5) **Language, distribution and timing of notice.**

(A) Telecommunications utilities ~~must~~shall send the notice to new customers at the time service is initiated, and upon customer request.

(B) Each telecommunications utility ~~must~~shall 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~~shall be in ~~plain~~both 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~~both 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~~shall provide such records to the customer, if the customer challenges the change.
- (B) A telecommunications utility ~~must~~shall 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~~on or before the 21st calendar day of staff's request.~~
- (C) The proof of authorization and verification of authorization as required from the alleged unauthorized telecommunications utility in accordance with~~pursuant to~~ subparagraph (B) of this paragraph and paragraph (2)(A) of subsection (1) 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 (1) 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 mustshall~~ order the utility to take corrective action as necessary, and the utility may be subject to administrative penalties ~~in accordance with~~~~pursuant to the~~ 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, ~~but not limited to,~~ 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, ~~thereby~~ denying the telecommunications utility the right to provide service in this state, ~~in accordance with~~~~pursuant to~~ the provisions of either PURA §17.052 or PURA §55.306.
- (5) **Coordination with the office of the attorney general.** The commission ~~will mustshall~~ coordinate its enforcement efforts regarding the prosecution of fraudulent, unfair, misleading, deceptive, and anticompetitive business practices with the Office of the Attorney General ~~in order~~ 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~~~~easily read,~~ 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)-(3) (No change.)

(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, ~~fax: (512) 936-7003,~~ e-mail address: ~~customer@puc.texas.gov~~customer@puc.state.tx.us. Hearing and speech-impaired individuals ~~with text telephones (TTY)~~ may contact the commission ~~through Relay Texas at 1-800-735-2989~~at (512) 936-7136. 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~~gives consent to the local exchange company that implemented the freeze.
- (2) **Nondiscrimination.** All local exchange companies that offer freezes ~~must~~shall 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~~shall clearly distinguish between intraLATA and interLATA telecommunications services. The local exchange company offering a freeze ~~must~~shall obtain separate authorization for each service for which a freeze is requested.

- (4) **Freeze information.** All information provided by a telecommunications utility about freezes ~~mustshall~~ have the sole purpose of educating customers and providing information in a neutral way to allow the customer to make an informed decision, and ~~mustshall~~ not market or induce the customer to request a freeze. The freeze information provided to customers ~~mustshall~~ include:

(A) - (D) (No change.)

- (5) **Freeze verification.** A local exchange company ~~mustshall~~ not implement a freeze unless the customer's request is verified using one of the following procedures:

(A) (No change.)

(B) An electronic authorization placed from the telephone number on which a freeze is to be imposed. The electronic authorization ~~mustshall~~ confirm appropriate verification data including, ~~but not limited to,~~ 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 ~~mustshall~~ establish one or more toll-free telephone numbers exclusively for this purpose. Calls to the ~~numbernumber(s)~~ 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~~shall include clear and conspicuous confirmation that the customer authorized a freeze. The independent third party ~~must~~shall:

(i)-(iii) (No change.)

(D) (No change.)

(6) **Written authorization.** A written freeze authorization ~~must~~shall:

(A)-(F) (No change.)

(G) contain clear and unambiguous language that confirms:

(i) the customer's name, address, and ~~each~~ telephone ~~number~~number(s) to be covered by the freeze;

(ii) the decision to impose a freeze on ~~each~~the telephone ~~number~~number(s) and the particular service with a separate statement for each service to be frozen;

(iii)-(iv) (No change.)

(7) **Lifting freezes.** A local exchange company that executes a freeze request ~~must~~shall allow customers to lift a freeze by:

(A)-(D) (No change.)

(8) **No customer charge.** The customer ~~must~~shall not be charged for imposing or lifting a freeze.

(9) **Local service freeze prohibition.** A local exchange company ~~must~~shall not impose a freeze on local telephone service.

- (10) **Marketing prohibition.** A local exchange company ~~mustshall~~ not initiate any marketing of its services during the process of implementing or lifting a freeze.
- (11) **Freeze records retention.** A local exchange company ~~mustshall~~ maintain records of all freezes and verifications for a period of 24 months and ~~mustshall~~ provide these records to customers and to the commission staff upon request.
- (12) **Suggested freeze information language.** A telecommunications utility~~Telecommunications utilities~~ that informs a customer~~inform customers~~ about freezes may use the following language. Other versions may be used, but ~~mustshall~~ 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 ~~mustshall~~ 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~~shall 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~~shall provide notice to ~~each~~every affected customer. The notice ~~must~~shall 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~~shall be sent promptly after all legal and regulatory conditions are met. The notice ~~must~~shall:

(A)-(J) (No change.)

- (2) The acquiring telecommunications utility ~~must~~shall provide the commission ~~Customer Protection Division (CPD)~~ 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) (No change.)

- (2) **Telecommunications utility's response to complaint.** After review of a customer's complaint, CPD ~~must~~shall forward the complaint to the telecommunications utility. The telecommunications utility ~~must~~shall respond to CPD within 21 calendar days after CPD forwards the complaint. The telecommunications utility's response ~~must~~shall include the following:

(A)-(B) (No change.)

- (3) **CPD investigation.** CPD ~~must~~shall 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~~shall 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~~shall 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, ~~shall~~ have the following meanings unless the context clearly indicates otherwise.

(A)-(G) (No change.)

(2) **Contents and delivery of notice required by paragraphs (3) and (4) of this subsection.**

(A) Notice ~~must~~shall contain at least:

(i)-(iii) (No 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~~shall 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~~Utility Directory maintained by the commission.

(3) **Notification requirements for change in PIC only.** The LSP ~~must~~shall notify the old PIC and the new PIC of the PIC change within five ~~working~~business days of the change execution.

(A) The new PIC ~~must~~shall initiate billing the customer for presubscribed services within five ~~working~~business days after receipt of such notice.

(B) The old PIC ~~must~~shall discontinue billing the customer for presubscribed services within five ~~working~~business 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~~business days of the change execution, the new LSP ~~must~~shall 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~~business days of the change execution, the new LSP ~~must~~shall

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 ~~workingbusiness~~ days of the old LSP's receipt of notice ~~in accordance with~~in accordance ~~pursuant~~ to subparagraph (A) of this paragraph, the old LSP ~~must~~shall 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~~in accordance ~~pursuant to~~ paragraph (4)(B) of this subsection, within five ~~workingbusiness~~ days after receipt of such notice, the new PIC ~~must~~shall 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~~in accordance ~~pursuant to~~ paragraph (4)(C) of this subsection that the old LSP is no longer the customer's LSP, the old PIC ~~must~~shall discontinue billing the customer for presubscribed services within seven ~~workingbusiness~~ days after receipt of such notice, unless the new LSP notifies the old PIC that it is the new PIC ~~in accordance with~~in accordance ~~pursuant to~~ paragraph (4)(B) of this subsection.

§26.142. Integrated Services Digital Network (ISDN). (REPEALED)

§26.171. Small Incumbent Local Exchange Company Regulatory Flexibility.

(a)-(b) (No change.)

(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~~¹⁰ calendar days before the effective date of the proposed change, the small ILEC ~~must~~^{shall} file ~~six copies of a commission~~ notice with the ~~commission and~~^{commission's Filing Clerk} and ~~shall serve a copy upon~~ the Office of Public Utility Counsel. Such notice ~~must~~^{shall} include:

(A)-(J) (No change.)

(K) information required by §26.121 of this title (relating to Privacy Issues); and

(L) (No change.)

(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~~^{shall} 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~~shall 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~~shall be provided to each affected customer-.

(2) (No change.)

(3) **Contents of notice.** Each notice must include:

(A) a description of ~~each service~~the service(s) affected by the proposed change;

(B)-(F) (No 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~~shall 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~~shall 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) (No change.)

(2) **Limitation on rate increases.** Except for good cause shown, a rate ~~will~~shall not be increased more than once in any 12-month period.

(3) (No change.)

(g) **Review.**

(1) **Effective date.** A proposed tariff filed under this section ~~is~~shall be 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~~shall 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~~shall be calculated based upon the total number of affected customers of record as of the calendar month preceding receipt of the complaint; or

(B)-(E)(No change.)

(h) **Docketing.** Following suspension of the effective date of the proposed tariff, the presiding officer ~~will~~shall 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~~shall be automatically suspended and the

commission ~~will~~shall 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~~pursuant to~~ the Public Utility Regulatory Act (PURA) §58.024; and
- (2) (No change.)

(b) (No change.)

(c) **General standards for reclassification of a service.** The following conditions must be satisfied ~~in order~~ to reclassify a service.

- (1) **Prerequisite for reclassification of a service.** The commission may ~~not~~ reclassify a service only if~~until~~ each competitive safeguard prescribed by PURA Chapter 60, Subchapters B through H, is fully implemented.
- (2) (No change.)
- (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) (No change.)

- (5) **Rate changes.** Rate changes ~~must~~shall 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~~in subsection (c), the following conditions must be satisfied ~~in order~~ to reclassify a basic network service as a discretionary service:
- (1)-(2) (No change.)
- (e) **Standards for reclassification of a basic network service or discretionary service as a competitive service.** In addition to meeting the requirements ~~of~~in subsection (c), the following conditions must be satisfied ~~in order~~ to reclassify a basic network service as a competitive service, or to reclassify a discretionary service as a competitive service:
- (1)-(4) (No change.)
- (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, ~~the price of the service in the reclassification area.~~
- (f) **Requirements for notice and contents of the application in compliance with this section.**
- (1) **Notice of Application.** The electing ILEC ~~must~~shall provide direct notice to all certificate of convenience and necessity, service provider certificate of operating authority, and certificate of operating authority~~Certificate of Convenience and Necessity, Service Provider Certificate of Operating Authority and Certificate of Operating Authority~~ holders offering service in the reclassification area and

~~issuedirect~~ notice to each customer of the ILE~~Call the ILEC's customers~~ in the reclassification area. The notice ~~mustshall~~ 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~~Public Utility Commission's Office of Consumer~~Customer~~ Protection Division at (512) 936-7120 or toll free at (888) 782-8477. Hearing- and speech-impaired individuals ~~with text telephones (TTY)~~ may contact the commission through Relay Texas at 1-800-735-2989at (512) 9367136."

- (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 ~~mustshall~~ be delivered to ~~commission staff~~the Office of Regulatory Affairs and one copy ~~mustshall~~ be delivered to the Office of Public Utility Counsel (OPUC). The application ~~mustshall~~ contain the following:
- (A) (No change.)
 - (B) For each exchange in the reclassification area, a description of the reclassification sought, each service,~~the service(s) and~~ the rates, terms, and conditions under which each service~~the service(s)~~ is currently provided, ~~and~~

how the proposed reclassification of ~~each service~~~~the service(s)~~ is just and reasonable and is not unreasonably preferential, prejudicial,~~—or~~ discriminatory,~~or~~ predatory or anti-competitive;

(C)-(H) (No change.)

(g) **Commission processing of application.**

(1) **Administrative review.** An application considered under this section is eligible for administrative review~~may be reviewed administratively~~ 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~~application~~. The effective date must~~shall~~ 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~~shall~~ be reviewed~~examined~~ for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant must~~shall~~ 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~~~~application shall~~ 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 ~~time~~-deadlines will~~shall~~ be determined 30 days from the ~~30th~~-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~~being administratively reviewed~~, the commission staff and the staff of OPUC~~the Office of Public Utility Counsel~~ may submit requests for information to the electing ILEC. A copy~~Six copies~~ of all answers to such requests for information must~~shall~~ be filed with central records and ~~one copy must~~shall be provided to OPUC~~the Office of Public Utility Counsel~~ 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~~The~~ commission staff will~~shall~~ and OPUC~~the Office of Public Utility Counsel~~ 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~~application~~, the presiding officer will~~shall~~ issue an order approving, denying, or docketing the electing ILEC's application.
- (2) **Approval or denial of application.** The application will~~shall~~ 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~~shall~~ docket the application.

- (3) **Standards for docketing.** The application may be docketed in accordance with~~pursuant to the commission's Procedural Rules~~ §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 ~~a date~~ 120 days after the applicant has filed all ~~of its~~ 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~~shall 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 insofar as it relates to telecommunications utilities, shall refer to dominant carriers.
- (b) **Purpose.** ~~This~~The purpose of this section ~~establishes to establish and~~ standards for the form, filing and review of a dominant certificated telecommunications utility’s (DCTU’s) tariff~~dominant certificated telecommunications utilities' (DCTUs) tariffs.~~
- (c) **Effective tariff.** A utility is prohibited from directly or indirectly demanding, charging, or collecting ~~No utility shall directly or indirectly demand, charge, or collect~~ any rate or charge, or ~~imposing~~impose 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.**~~Requirements as to size, form, identification and filing of tariffs. Every public utility shall file with the commission filing clerk five copies of its tariff containing schedules of all its rates, tolls, charges, rules, and regulations pertaining to all of its utility service when it applies for a certificate of convenience and necessity to operate as a public utility.~~
- (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 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).

(3) A public utility must~~It shall~~ also file ~~five copies of~~ each subsequent tariff revision with the commission. Each revision ~~must~~~~shall~~ be accompanied by a cover page which contains a list of pages being revised, a statement describing each change, the effect of the change~~its effect~~ if it ~~revises~~~~is a change in~~ an existing rate, and a statement describing the~~as to~~ impact on rates of the change for each~~by~~ customer class, if any. If a proposed tariff revision constitutes an increase in existing rates of a particular customer class~~or classes~~, then the commission may require that notice be given.

(4) 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.

(12) ~~All tariffs shall be in loose-leaf form of size 8 1/2 inches by 11 inches and shall be plainly printed or reproduced on paper of good quality.~~ The front page of the tariff ~~must include~~shall contain the name of the utility and location of its principal office and the type of service rendered ~~(telephone, electric, etc.).~~

(23) Each rate schedule must clearly state the territory, city, county, or exchange where the rate schedule applies~~wherein said schedule is applicable.~~

(34) Tariff sheets ~~mustare to~~ be numbered consecutively per schedule. Each sheet ~~mustshall~~ 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 ~~mustare to~~ be designated as original sheets. Sheets being revised ~~mustshould~~ show the number of the revision, and the sheet numbers shall be the same.

~~(5) — Any telecommunications utility, after a declaration by the commission that it is a dominant carrier, shall file tariffs complying with the above requirements. These tariffs shall be filed within the time specified in the commission order finding the telecommunications utility a dominant carrier, or within 60 days in the absence of such a specification.~~

(ge) **Composition of tariffs.** ~~A~~The tariff ~~mustshall~~ 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.

(hf) **Tariff filings in response to commission orders.** ~~A tariff filed~~Tariff filings made in response to ~~a commission an~~ order issued by the commission ~~mustshall~~ include a transmittal letter ~~affirmingstating~~ that the ~~tariff is~~ tariffs attached are in compliance with the order, ~~providing~~ the ~~control~~docket number, date of the order, a list of tariff sheets

filed, and any other necessary information. The tariff sheets ~~must~~shall comply with all other rules ~~of this title in this chapter~~ and ~~must~~shall include only the changes ordered. The effective date ~~and/or~~ wording of the tariffs ~~must~~shall comply with the provisions of the order.

(ig) **Symbols for changes.** Each proposed tariff sheet ~~must~~shall contain notations in the right-hand margin indicating each change made ~~on these sheets~~. 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~~In addition to symbols for changes, each changed provision in the tariff ~~must~~shall contain a vertical line in the right-hand margin of the page which clearly shows the exact number of lines being changed.

(jh) **Availability of tariffs.** Each utility ~~must~~shall make available to the public electronically and at each of its business offices or designated sales offices within Texas, each tariff that is ~~all of its tariffs~~ currently on file with the commission, ~~and~~ The utility must assist ~~its employees shall lend assistance to~~ persons seeking information on its tariffs and permit such persons the ~~afford inquirers an~~ opportunity to examine any tariff upon request. The utility must also ~~shall~~ provide copies of ~~any portion of each of~~ its tariffs at a reasonable cost.

- (i) ~~**Effective date of tariff change.** No jurisdictional tariff change may take effect prior to 35 days after filing without commission approval. The requested date will be assumed to be 35 days after filing unless a different date is requested in the application. The commission may suspend the effective date of the tariff change for 120 days after the requested effective date and may extend that suspension another 30 days if required for final determination. In the case of an actual hearing on the merits of a case that exceeds 15 days, the suspension date is extended two days for each one day of actual hearing in excess of 15 actual hearing days.~~

§26.208. General Tariff Procedures. [REPEALED]

§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) **New DCTU tariffs.** An applicant must file a new DCTU tariff prior to or concurrently with an application for certification under §26.111 of this title (relating to Certificate of Operating Authority (COA) and Service Provider Certificate of Operating Authority (SPCOA) Criteria)) and must meet the requirements of paragraphs (2)(A) and (B) of this subsection.
- (2) **DCTU tariff amendments involving a rate change.** For a tariff amendment involving a rate change, including 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 subsections (c)(1)(C)(i) and (ii) of this section. Notice under this subparagraph is waived if the rate change only involves a rate reduction.

(3) **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, 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.

(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 rate increase, 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, Office of Customer Protection, PO 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)(2)(A) or (3)(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 paragraph (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:

(i) dismiss the application without prejudice; or

(ii) 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~~In addition, 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~~DCTUs obtain~~ 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. ~~In addition to copies required by other commission rules, one copy of the application shall be delivered to the Office of Regulatory Affairs and one copy to the Office of Public Utility Counsel. Nothing in this section precludes a DCTU from utilizing other provisions of this title to seek approval to offer such services, however, the commission or the presiding officer, in its discretion, may require any application for a new or~~

~~experimental service to comply with the requirements of this section.~~ Not later than ~~3530~~ days prior to the proposed effective date of the new or experimental service, the DCTU ~~mustshall~~ file with the commission ~~and the Office of Public Utility Counsel~~ an application containing the following information:

(1)-(3) (No change.)

- (4) a statement detailing the type of notice, ~~if any,~~ 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~~§26.208(e) of this title ~~(relating to General Tariff Procedures);~~
- (5) a copy ~~of the text~~ 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 ~~willshall~~ 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 ~~mustshall~~ 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 ~~orand/or~~ common costs. Capital costs related to providing the service ~~mustshall~~ be separately identified in these projections. The application ~~mustshall~~ 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 ~~mustshall~~ 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 ~~mustshall~~ also include:

(A) an implementation plan which ~~mustshall~~ 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. ~~The DCTU shall also specify in its plan~~

(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 ~~mustshall~~ specify the exchanges in which it proposes to offer the experimental service.

(98) If the application concerns an experimental service for which a range of rates is proposed, the application ~~mustshall~~ 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.

(109) 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: ~~and the commission or the presiding officer may grant for good cause~~

(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~~~~However, no~~ experimental service will not~~shall~~ be approved for more than two years~~;~~;

(B) ~~A~~~~no~~ prove-in period will not~~shall~~ be extended beyond two years and~~;~~;

(C) As an alternative to providing in lieu of 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~~shall~~ 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~~shall~~ include a complete statement of the DCTU's arguments supporting that request. The

presiding officer ~~will~~shall rule on the waiver request within 15 days of the filing of the request. ~~A copy of the presiding officer's ruling shall be provided to the commission, and the commission may overrule any waiver granted by a presiding officer within 15 days of the presiding officer's ruling.~~

(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~~shall apply to any new service approved under this section:

- (1) Such new service ~~must~~shall be offered at the same price throughout the DCTU's system.
- (2) The service ~~must~~shall 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~~shall be designed to generate sufficient annual revenues to recover the annual long run incremental cost of the service, including a contribution for joint ~~and/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~~shall 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~~shall give such notice of the discontinuation as the presiding officer may require.

~~(f) **Interim rates.** For good cause, interim rates may be approved after docketing. However, interim rates shall not be approved if the new service requires substantial initial investment by customers before they may receive the service unless the commission requires the DCTU to notify every customer prior to purchasing the service that this investment is at risk due to the interim nature of the service and the rates for the service and unless the DCTU makes appropriate provisions to protect its customers from the risks of the DCTU's failure to notify.~~

~~(f)~~ **Reporting requirements.**

~~(1) If a new service is approved based on either an administrative review or a docketed proceeding,~~ the DCTU ~~must~~shall 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~~commission (or, in connection with an administrative review, 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~~One such~~ report ~~is~~~~shall be~~ due nine months after the service is first offered and ~~must~~~~shall~~ contain information for at least the first six months the service was offered.
- (B) The second such report ~~must~~~~shall~~ be filed 12 months after the service is first offered and ~~must~~~~shall~~ contain information for at least the first nine months the service was offered.
- (C) The third such report ~~must~~~~shall~~ be filed no later than 15 months after the service is first offered and ~~must~~~~shall~~ contain information for at least the first 12 months the service was offered.
- (3) Such reporting requirements ~~are~~~~shall be~~ waived for experimental services of one year's duration or less, but the DCTU ~~must~~~~shall~~ retain in its record such information related to revenues, demand and expenses and ~~must~~~~shall~~ submit such information with any subsequent request to make a formerly experimental service a permanent new service.
- (gh) **Subsequent review of the service.** Except as prohibited by ~~the Public Utility Regulatory Act~~ Chapters 58 or 59 of the Public Utility Regulatory Act, if a new or experimental service is approved ~~under the procedures set forth in this section, the~~ 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.
- (hi) **Provisions for SLECs.** Notwithstanding ~~§26.208~~~~§26.208(e)~~ of this title (relating to General Tariff Procedures) 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~~examiner 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 ILECa incumbent local exchange company~~:

- (1) (No change.)
- (2) a waiver of the incremental cost standard ~~will~~shall 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 and/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. ~~In addition to copies required by other commission rules, one copy of the application shall be delivered to the Regulatory Division. Nothing in this section precludes a DCTU from utilizing other provisions of this title to offer such promotional rates.~~ Not later than ~~35~~30 days prior to the proposed effective date of the

promotional rate, the DCTU ~~must~~shall file with the commission ~~and the Office of Public Utility Counsel~~ an application containing the following information:

(1)-(5) (No change.)

(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~~§26.208(e) of this title (relating to General Tariff Procedures);

(7) a copy ~~of the text~~ of the notice, ~~if any~~;

(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~~shall 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~~shall 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~~shall also include all workpapers and supporting documentation relating to computations or assumptions contained in the application; and

(9) (No change.)

- (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~~shall 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~~shall 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~~shall file a statement of intent to file such an application and the expected filing date. Such notice ~~must~~shall 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~~shall 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 ~~mustshall~~ apply to promotional rates approved under this section:

- (1) the promotional rates ~~mustshall~~ 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 ~~mustshall~~ not be offered for more than six months during any five-year period, and no customer ~~mustshall~~ be charged promotional rates for more than three consecutive months;
- (3) promotional rates ~~mustshall~~ be offered only to new customers of a service or to new and existing customers, provided that, for existing customers, the promotional rates ~~mustshall~~ only apply to additional units of service ordered during the promotional rate period; and
- (4) the promotional rate ~~mustshall~~ 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 ~~mustshall~~ 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 ~~mustshall~~ 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~~shall 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~~shall 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 ~~based on either an administrative review or a docketed proceeding~~, the DCTU ~~must~~shall 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~~shall 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~~shall 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~~shall initiate an inquiry into the reasonableness of such promotional rates and ~~must~~shall suspend those rates pending the completion of the inquiry.
- (k) **Provisions for SLECs.** Notwithstanding ~~§26.208§26.208(e) of this title (relating to General Tariff Procedures)~~ 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~~definitions). If the presiding ~~officer~~examiner 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) (No change.)
- (2) a waiver of the incremental cost standard ~~will~~shall 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) ~~companies (ILECs), 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 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~~the review of pricing flexibility applications.
- (c) **Pricing flexibility.**
- (1) **Eligible services.** ~~An ILEC The types of pricing flexibility that an incumbent local exchange company (ILEC) may request the types of pricing flexibility established by this subsection are set forth in subparagraphs (A) (C) of this paragraph.~~
- (A) **Banded rates.** If an ILEC is granted the authority to charge banded rates, the minimum rates ~~must~~shall 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~~shall file a tariff showing the minimum and maximum rates and specifying its current rate. The current rate, ~~as~~ specified

in the ILEC's tariff, ~~must~~shall 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~~shall 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~~shall maintain at the commission a current price list for the service, and the commission ~~must~~shall 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~~shall 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 to the commission pursuant to this subsection to obtain a type of 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~~ pursuant to this subsection to obtain any type of pricing flexibility specified in paragraph (1) of this subsection. ~~Nothing~~ However, ~~nothing~~ in this subsection ~~permits~~ shall permit 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~~ shall:
- (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~~ pursuant to paragraph (1)(C) of this subsection that involves rate-setting;

(i)-(iii) (No change.)

(iv) demonstrate that the rates are such that the service identified in accordance with~~pursuant~~ to subparagraph (C) of this paragraph will not be subsidized directly or indirectly by regulated monopoly services; and

(v) (No change.)

(C) identify the service for which the ILEC is requesting pricing flexibility, including each component of the service~~thereof~~, and provide functional and technical descriptions of the service, including:

(i)-(iv) (No change.)

(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) (No change.)

(ii) citations to the tariff provisions under~~pursuant to~~ which each such service will be provided;

(E) designate each exchange~~the exchange(s)~~ as to which the ILEC is seeking pricing flexibility;

(F) include a map or maps of each exchange~~the exchange(s)~~ designated in accordance with~~pursuant to~~ 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~~~~the exchange(s)~~ designated in accordance with~~pursuant to~~ subparagraph (E) of this paragraph, and that are the same, equivalent, or substitutable for the service identified in accordance with~~pursuant to~~ 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~~pursuant to~~ subparagraph (G) of this paragraph, discuss:
- (i)-(v) (No change.)
- (I) demonstrate that the level of competition with respect to all components of the ILEC's service identified in accordance with~~pursuant to~~ subparagraph (C) of this paragraph represents a significant competitive challenge within ~~each exchange~~~~the exchange(s)~~ designated in accordance with~~pursuant to~~ subparagraph (E) of this paragraph that warrants the pricing flexibility specified in accordance with~~pursuant to~~ subparagraph (B) of this paragraph;
- (J) demonstrate that the service identified in accordance with~~pursuant to~~ 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~~pursuant to~~ subparagraph (B) of this paragraph is customer-specific pricing or detariffing, demonstrate that the service identified in accordance with~~pursuant to~~ 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~~pursuant to~~ 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) (No change.)

(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~~pursuant to~~ subparagraph (C) of this paragraph and any component of the service~~thereof~~ and demonstrate why such restrictive tariff language is consistent with the policy established in the Public Utility Regulatory Act §52.001; and

(O) (No change.)

(4) **Tier 1 LECs.** The commission ~~will~~shall 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. An application for pricing flexibility shall be docketed and assigned to a presiding officer. No later than ten working days after the filing of an application for pricing flexibility, the presiding officer shall issue an order scheduling a prehearing conference for the purposes of determining notice requirements, establishing a procedural schedule, and addressing other matters as may be appropriate. The commission shall make a final decision no later than 180 days after the completion of notice, as ordered by the presiding officer. However, this 180-day period shall be extended two days for each one day of actual hearing on the merits of the case that exceeds 15 days. The presiding officer or commission, upon a showing of good cause relating to the applicant's failure or refusal to prosecute, including but not limited to the applicant's unreasonable resistance to discovery, may further extend the timeline, provided that the order shall specifically identify the facts found to constitute good cause. This deadline may be expressly waived by the applicant.~~

- (6) **Review of competition outside exchange.** For ILECs with less than 31,000 access lines, the ~~presiding officer will~~~~commission shall~~ not be limited under paragraph (7)(D)(i)-(x) of this subsection to considering only competition within each exchange~~the exchange(s)~~ where the ILEC will provide the service. In accordance with~~Pursuant to~~ 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~~~~the exchange(s)~~ designated in paragraph (3)(E) of this subsection.

- (7) **Application requirements.** An application for pricing flexibility ~~will~~~~shall~~ be approved if, after ~~commission review~~~~an evidentiary hearing~~, the commission ~~determines~~~~finds, based on the evidence~~, that:

(A)-(C) (No change.)

(D) the grant of pricing flexibility for the service identified in accordance with ~~pursuant to~~ paragraph (3)(C) of this subsection within ~~each~~~~the exchange(s)~~ designated in accordance with ~~pursuant to~~ 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~~~~the exchange(s)~~ designated in accordance with ~~pursuant to~~ paragraph (3)(E) of this subsection;
- (ii) the extent to which the same, equivalent, or substitutable service is available within each exchange~~the exchange(s)~~ designated in accordance with ~~pursuant to~~ 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~~the exchange(s)~~ designated in accordance with ~~pursuant to~~ 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~~the exchange(s) designated ~~in accordance with~~pursuant to 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~~the exchange(s) designated ~~in accordance with~~pursuant to paragraph (3)(E) of this subsection;
 - (vi)-(vii) (No change.)
 - (viii) whether the ability of the ILEC to flexibly price the service within ~~each~~the designated ~~exchange~~exchange(s) 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~~the exchange(s) 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~~pursuant to paragraph (1)(C) of this subsection that involves rate-setting, are just and reasonable and:
- (i)-(iv) (No change.)

- (8) **Alternative relief.** Nothing in this subsection ~~prevents~~~~is intended to prevent~~ the presiding officer from ~~recommending, or the commission from approving based on the record evidence,~~ relief other than that requested in the application.
- (d) **Customer-specific contracts.** An ILEC ~~may~~~~shall have the authority to~~ enter into customer-specific contracts for:
- (1)-(3) (No change.)
- (4) customized services that are unique because of size or configuration, provided that such customized services ~~do~~~~shall~~ 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~~~~pursuant to~~ 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~~~~pursuant to~~ this section.
- ~~(f) **Severability.** If any provision of this section or the application thereof to any person or any circumstances is held invalid, such invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application. It is the intent of the commission that the provisions of this section are severable.~~

§26.214. Long Run Incremental Cost (LRIC) Methodology for Services provided by Certain Incumbent Local Exchange Companies (ILECs).

- (a) **Application.** This section ~~applies~~~~shall apply~~ 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~~~~shall~~ 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) (No change.)
- (d) **Procedures for review of LRIC studies filed under subsection (c) of this section.** A LRIC study considered under this section ~~will~~~~shall~~ 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 pursuant to this section, the ILEC ~~must~~~~shall~~ file with the commission and the Office of Public Utility Counsel (~~OPUC~~)(~~OPC~~) a notice of its intent to file such LRIC study and the expected filing date. The ILEC's notice ~~must~~~~shall~~ indicate that the filing is being made pursuant to this section. The commission ~~will~~~~shall~~ then publish notice of the ILEC's intent to file the LRIC study in the *Texas Register*.
 - (2) **Sufficiency.** The LRIC study ~~will~~~~shall~~ be examined for sufficiency. To be sufficient, the LRIC study ~~must~~~~shall~~ conform to the requirements of this section.

- (A) Except as required under subparagraph (B) of this paragraph, if ~~the~~ commission staff concludes that material deficiencies exist in the LRIC study, the ILEC ~~must~~shall be notified by ~~the~~ commission staff of the specific deficiency within three working days after the filing date of the LRIC study. The ILEC ~~will~~shall 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~~shall issue an order with regard to the sufficiency.
- (B) If the LRIC study filed for approval ~~in accordance with~~pursuant to 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~~pursuant to this section ~~will~~shall be abated pending the resolution of the contested case.
- (3) Time schedule.
- (A) (No change.)
- (B) No later than 55 days after the filing date of the sufficient LRIC study, ~~OPUC~~OPC 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, ~~the~~ commission staff ~~must~~shall 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, ~~OPUCOPC~~, 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~~shall 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~~shall 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~~shall 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~~shall 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, ~~OPUCOPC~~, and any party that demonstrates a justiciable interest may submit requests for information to the ILEC. ~~Answers~~Copies of all answers to such requests for information ~~must~~shall be provided within ten days after receipt of the request by the

ILEC to ~~the~~ commission staff, ~~OPUCOPC~~, 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, ~~OPUCOPC~~, 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~~shall be the date it is approved by the presiding officer.

§26.215. Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility (DCTU) Services.

(a)-(j) (No change.)

(k) **Review process for LRIC studies.** A LRIC study considered under this section ~~will~~shall 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~~shall be examined for sufficiency. To be sufficient, the LRIC study ~~must~~shall 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~~shall be notified within 15 days of the filing date of the specific deficiency in its LRIC study. The DCTU ~~will~~shall have 15 days from the date it is notified of the deficiency to file a corrected LRIC study.

(2) **Time schedule.**

(A)-(B) (No change.)

(C) No later than 65 days after the filing date of the sufficient LRIC study, ~~the~~ commission staff ~~must~~shall file with the presiding officer written comments or recommendations concerning the LRIC study.

(D) (No change.)

(E) No later than 85 days after the filing date of the sufficient LRIC study, the presiding officer ~~must~~shall 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~~shall 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~~shall 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~~shall 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~~Three copies of all answers to such requests for information ~~must~~shall be provided within ten days after receipt of the request by the DCTU to ~~the~~ commission staff, OPUC and any party that demonstrates a justiciable interest.

- (4) (No change.)

- (1) (No change.)

§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~~pursuant to the Public Utility Regulatory Act (PURA), Chapter 55, Subchapter B. On or after September 1, 2011, the commission ~~will~~may 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~~utility(ies)” in this section refers to a dominant certificated telecommunications ~~utility~~utility(ies).
- (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)-(iii) (No change.)
- (iv) an application filed by one or more of ~~each~~the affected ~~utility~~utility(ies).
- (B) A request for establishment of a particular EAS arrangement ~~in accordance with~~pursuant to 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~~shall state the name of ~~each exchange~~the exchange(s) to which EAS is sought.
- (D) The petition ~~must~~shall set forth the name and telephone number of each signatory and the name of the exchange from which the subscribers receive service.
- (E) (No change.)
- (F) Requests for EAS into metropolitan exchanges will be grouped by relevant metropolitan exchange. For each metropolitan exchange, ~~the~~ 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 two weeks notice in a newspaper of general circulation in the metropolitan area for two consecutive calendar weeks~~must be published~~. The notice ~~must~~shall contain such information as deemed reasonable by the presiding officer in the proceeding. ~~The~~No earlier than 60 days from the date of final publication of notice, the demand studies required by paragraph (3) of this subsection ~~must~~shall 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~~~~utility(ies)~~ involved will be directed by the commission staff to initiate appropriate calling usage studies. Within 90 days of receipt of such direction, the ~~utility~~~~utility(ies)~~ ~~must~~~~shall~~ provide the results of such studies to the commission staff and to a representative of ~~each the~~ petitioning ~~exchange~~~~exchange(s)~~. The message distribution and revenue distribution detail from the studies ~~must~~~~shall~~ be considered proprietary unless the parties agree otherwise and ~~must~~~~shall~~ not be released for use outside the context of the commission's proceedings. The data to be provided ~~must~~~~shall~~ be based upon a minimum 60 day study of representative calling patterns, ~~must~~~~shall~~ be in such form, detail, and content as the commission staff may reasonably require and ~~must~~~~shall~~ include at least the following information:

(i)-(v) (No change.)

(vi) a listing of known interexchange carriers providing service between the petitioning exchange and ~~each exchange~~~~the exchange(s)~~ to which EAS is desired.

(B) A community of interest between exchanges ~~must~~~~shall~~ be considered to exist from one exchange to the other when:

(i) there is an average ~~(arithmetic mean)~~ of no less than ten calls per subscriber account per month from one exchange to the other, and

(ii) (No change.)

(C) A request for EAS ~~must~~shall be assigned a project number and notice ~~must~~shall be provided, ~~in accordance with~~~~pursuant to~~ paragraph (7) of this subsection, when a community of interest is found to exist as described in subparagraph (B) of this paragraph:

(i)-(ii) (No change.)

(D) The project ~~must~~shall be established as a formal docket upon the motion of the commission staff.

(E) Following the docketing of a request, a prehearing conference ~~must~~shall be scheduled to establish ~~each exchange~~~~the exchange(s)~~ to which EAS is sought, and to report any agreements reached by the parties. The ~~utility~~~~utility(ies)~~ involved ~~must~~shall conduct appropriate demand and costing analyses according to paragraphs (3) and (4) of this subsection.

(3) **Demand analysis.**

(A) The ~~utility~~~~utility(ies)~~ involved ~~must~~shall conduct analyses of anticipated demand for the requested EAS. The data ~~must~~shall be in such form, detail, and content as the commission staff may reasonably require and ~~must~~shall 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~~~~pursuant to~~ paragraph (5) of this subsection and the associated probability of that level of subscribership;

(ii)-(iii) (No change.)

(B) Unless the ~~utility~~~~utility(ies)~~ demonstrates good cause to expand the time schedule, the ~~utility~~~~utility(ies)~~ ~~must~~~~shall~~ 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~~~~utility(ies)~~ involved ~~must~~~~shall~~ 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~~~~shall~~ consider and develop the long run incremental costs as follows:

(i)-(iii) (No change.)

(B) (No change.)

(C) The ~~utility~~~~utility(ies)~~ ~~must~~~~shall~~ file with the commission's ~~Filing Clerk and serve copies on commission staff and other parties to~~ 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~~~~utility(ies)~~ can demonstrate that good cause exists to expand the time schedule for a particular study:

(i) incremental costs identified in this paragraph ~~must~~~~shall~~ be filed no later than 90 days from the filing of the results of the demand analysis conducted pursuant to paragraph (3) of this subsection; and

- (ii) toll revenue effects, if analyzed pursuant to subparagraph (B) of this paragraph, ~~must~~shall be filed no later than 90 days from the filing of the results of the incremental costs, pursuant to 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~~utility(ies) shall 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 the~~ petitioning ~~exchange~~exchange(s) 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) (No change.)

- (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~~the petitioning ~~exchange~~exchange(s); 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~~the petitioning ~~exchange~~exchange(s).

(B) (No change.)

(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~~shall be charged to subscribers who order the service within 12 months from the time it is first offered. The non-recurring charge ~~must~~shall not exceed \$5.00 per access line.

(D) The EAS rate additive to be used in ~~each~~the affected ~~exchange~~exchange(s) must meet the following standards.

(i) No increase in rates ~~must~~shall 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~~shall 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 ~~mustshall~~ 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 ~~mustshall~~ 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 ~~mustshall~~ be increased by equal percentages.

(6) Subscription threshold.

- (A) A threshold demand level ~~mustshall~~ 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 ~~mustshall~~ then be undertaken to determine the likely demand level. If the likely demand level equals or exceeds the threshold demand level, then EAS ~~mustshall~~ be provided in accordance with the commission's order. If the threshold demand level is not met, the affected ~~utilityutility(ies)~~ is not required to provide the EAS approved by the commission.
- (B) The cost of pre-subscription ~~mustshall~~ be divided between the utility and the petitioners. The petitioners ~~mustshall~~ pay for the printing of bill inserts and ballots and the utility ~~mustshall~~ insert them in bills free of charge. In

the alternative, upon the agreement of the parties, the utility ~~must~~shall provide, free of charge, and under protective order, the mailing labels of the subscribers in the petitioning exchange, and the petitioners ~~must~~shall 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~~the petitioning ~~exchange~~exchange(s), 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~~shall also publish notice in the *Texas Register*.
- (B) Written notice containing the information described above ~~must~~shall be provided to ~~each~~the governing ~~official~~official(s) of all incorporated areas within the affected exchanges and ~~each~~the county ~~commission~~commission(s), or ~~each~~the board of directors or trustees of a community association representing any unincorporated areas within the affected exchanges.
- (C) The cost of notice ~~must~~shall 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(ies) (joint filings)~~ 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~~ ~~pursuant to~~ 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 ~~commissioner~~ representing any unincorporated areas within the affected exchange.
 - (ii) (No change.)

(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~~shall include the commission staff in their negotiations.

(iv)-(v) (No change.)

(vi) Joint filings ~~must~~shall 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~~shall 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~~shall 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) (No change.)

(viii) The notice requirements of paragraph (7) of this subsection are applicable to joint filings. In addition, the commission ~~must~~shall publish notice of the proposed joint filing in the *Texas Register* and ~~must~~shall 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~~shall 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~~shall 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~~shall be contained within a continuous boundary and all exchanges within that boundary ~~must~~shall 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~~pursuant to 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)-(2) (No change.)

(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~~pursuant to §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~~pursuant to PURA §55.048(b), to subscribers in a petitioning telephone exchange.

(5) (No change.)

(6) **Expanded local calling service (ELCS) surcharge** — A fee billed by an ILEC, ~~in accordance with~~pursuant to PURA §55.048(c), to ~~each Texas subscriber~~all of the ILEC's Texas subscribers, unless an exception is granted by the commission.

ELCS surcharges are designed to recover the residual in paragraph (8) of this subsection.

(7)-(8) (No change.)

(c) **General Principles.** The commission will~~shall~~ 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~~pursuant to~~ Procedural Rule §22.241 of this title (relating to Investigations) to determine whether ELCS surcharges comply with the requirements in PURA §55.048.

(2)-(3) (No change.)

(4) An application to establish an ELCS surcharge must~~shall~~ contain information that enables commission staff~~the Office of Regulatory Affairs~~ to validate and replicate the method used by the ILEC to develop a proposed ELCS surcharge.

(5) When established, ELCS surcharges must~~shall~~ be based upon the most current count of local exchange access lines billed by an ILEC.

(6) The commission will ~~shall~~ 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~~shall~~ 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~~shall obtain agreement from ~~commission staff~~the Office of Regulatory Affairs on a method for securing the confidentiality of information the ILEC deems confidential. An application filed ~~in accordance with~~pursuant to subsection (e) of this section ~~must~~shall not exclude information deemed confidential by the ILEC.
- (e) **Filing an application.** An application to establish or increase an ELCS surcharge ~~must~~shall be assigned a ~~control~~project number and a presiding officer ~~must~~shall be assigned to the project. An ILEC's application ~~must~~shall be reviewed administratively unless the presiding officer docket the project. An application ~~must~~shall, at a minimum, include:
- (1) twelve consecutive months of actual toll revenue data collected as near the ELCS implementation date as ~~is practicable but not possible and, in no event,~~ earlier than 18 months before the ELCS implementation date. Data provided by an ILEC ~~must~~shall 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 not possible and, in no event,~~ earlier than 18 months before the ELCS implementation date. Data provided by an ILEC ~~must~~shall 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)-(8) (No change.)

(9) a copy of the confidentiality agreement, if such an agreement is necessary, signed by a representative of ~~commission staff~~the Office of Regulatory Affairs;

(10)-(11) (No change.)

(f) Administrative response to an application.

(1) **Notice.** The presiding officer ~~will~~shall 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~~shall 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~~shall identify the assigned ~~control~~project number, ~~must~~shall include the language ~~provided by~~in Procedural Rule §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~~shall describe the application and ~~must~~shall be written in ~~plain~~both English and Spanish. Notice ~~must~~shall be published within 40 days of the date the presiding officer files an order approving the notice format. The ILEC ~~must~~shall file an affidavit of completion of published notice within ten days following such completion. The presiding officer ~~will~~shall 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~~shall provide a copy of its application to the Office of Public Utility

Counsel on the same day the application is filed with the ~~commission~~commission's
~~Filing Clerk.~~

- (2) **Intervention.** The intervention deadline ~~must~~shall 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~~shall rule on a request to intervene, in accordance with ~~Procedural Rule~~ §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~~commission's ~~Filing Clerk.~~ 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 ~~the commission's Procedural Rules,~~ Chapter 22, Subchapter H of this title (relating to Discovery Procedures).
- (4) **Interim surcharges.** ~~No later~~Not more than 30 days after the intervention deadline, the presiding officer ~~will~~shall 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 ~~Procedural Rule~~ §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~~the Office of Regulatory Affairs ~~shall~~ 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~~Not more than 30 days after ~~commission staff's~~Office of Regulatory Affairs' comments are filed, the ILEC ~~must~~shall file a response and may amend or supplement its

application. ~~No later~~~~Not more~~ than ten days after the ILEC's response is filed, ~~commission staff must~~~~the Office of Regulatory Affairs shall~~ 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~~~~the Office of Regulatory Affairs~~ or any intervenor files, within 30 days after the intervention deadline, a request to docket the project, the presiding officer ~~will~~~~shall~~ docket the project. Upon docketing, the presiding officer ~~will~~~~shall~~ ascertain whether the parties prefer to pursue settlement negotiations or alternative dispute resolution. If so, the presiding officer ~~will~~~~shall~~ 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~~~~the Office of Regulatory Affairs~~ nor an intervenor requests docketing, the presiding officer ~~must~~~~shall~~ administratively approve or modify the application within 40 days after the intervention deadline.

- (g) **Calculation of initial ELCS surcharges.** An initial ELCS surcharge ~~must~~~~shall~~ be calculated using the formula described in this subsection unless the presiding officer, for good cause, modifies the formula.

(1)-(3) (No change.)

- (h) **Adjustments to ELCS surcharges.** ELCS surcharges ~~must~~~~shall~~ 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~~shall 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~~shall include only non-petitioning exchanges.
- (i) **Duration.** An ILEC ~~must~~shall 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 ~~all of~~ its rates and charges by filing a rate filing package. Following a review of the ILEC's cost of service in accordance with~~pursuant to Substantive Rule~~ §26.201 of this title (relating to Cost of Service), any resulting ELCS surcharge ~~must~~shall 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~~shall 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~~shall be zero. ~~A tariff sheet~~Tariff sheet(s) filed by the ILEC ~~must~~shall 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~~shall be for a duration not to exceed two years. At the end of the phase-out period, the ELCS surcharge ~~must~~shall be zero. ~~A tariff sheet~~Tariff sheet(s) filed by the ILEC ~~must~~shall contain ELCS surcharges for the two-year period and ~~must~~shall 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)-(i) (No change.)

(j) Proprietary or confidential information.

- (1) Information filed ~~in accordance with~~pursuant to this ~~section~~rule is presumed to be public information. An electing company ~~has~~shall have the burden of establishing that information filed ~~in accordance with~~pursuant to this ~~section~~rule is proprietary or confidential.
- (2) Nothing in this subsection ~~must~~shall be construed to change the presumption that information filed ~~in accordance with~~pursuant to 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~~pursuant to this section ~~must file such~~shall submit two copies of the proprietary or confidential data confidentially to Central Records for use by the commission staff subject to a commission approved protective agreement. 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~~shall be adjusted day-for-day to reflect the number of days the proprietary or confidential data is delayed.

(l) (No change.)

§26.272. Interconnection.

- (a) **Purpose.** The purpose of this section is to ensure that a telecommunications service provider that is all providers of telecommunications services which are certificated providesto provide local exchange service, basic local telecommunications service, or switched access service within the state interconnect and maintainsmaintain 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, meansshall mean an end-user customer.
- (c) **Application and Exceptions.**
- (1) **Application.** This section applies to all certificated telecommunications utility (CTU) that providesutilities (CTUs) providing local exchange service.
- (2) **Exceptions.** Except as herein provided under this paragraph, a CTUall CTUs 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 isshall be 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~~~~shall~~ 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~~~~shall apply~~ 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~~~~shall~~ 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~~~~shall~~ be at rates, terms, and conditions ~~prescribed by as described in~~ subsection (d)(4)(A) of this section.

(C) Rural telephone companies.

- (i) This section ~~shall~~ also ~~applies~~~~apply~~ to rural telephone companies as defined in 47 ~~U.S.C. United States Code~~ §153 (1996) to the extent required by 47 ~~U.S.C. United States Code~~ §251(f) (1996).
- (ii) Rural telephone companies ~~must~~~~shall~~ terminate traffic of a CTU ~~that~~~~which~~ 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 shall 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~~^{pursuant to} 47 ~~U.S.C. United States Code~~ §251(f)(2) (1996).
- (ii) Small CTUs ~~must~~^{shall} terminate traffic of a CTU ~~that~~^{which} 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 shall 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~~^{under} PURA §52.154.

(d) **Principles of interconnection.**

(1) **General principles.**

- (A) Interconnection between CTUs ~~must~~shall be established in a manner that is seamless, interoperable, technically and economically efficient, and transparent to the customer.
- (B) Interconnection between CTUs ~~must~~shall utilize nationally accepted telecommunications industry standards ~~and/or~~ mutually acceptable standards for construction, operation, testing and maintenance of networks, such that the integrity of the networks is not impaired.
- (C) (No change.)
- (D) An interconnecting CTU must~~Interconnecting CTUs shall~~ negotiate rates, terms, and conditions for facilities, services, or any other interconnection arrangements required ~~in accordance with~~pursuant to this section.
- (E) This section ~~does not authorize~~should not be construed to allow 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~~Interconnecting CTUs shall~~ make a good-faith effort to accommodate each interconnecting CTU's~~other'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), §26.55 of this title (relating to Monitoring of Service),

§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~~Information Regarding Rates and Services of Nondominant Carriers~~), §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~~Interconnecting CTUs shall~~ ensure that each~~customer~~~~customers~~ of other interconnecting CTUs are~~CTUs shall~~ not required~~have~~ to dial additional digits or incur dialing delays that exceed industry standards ~~in order~~ to complete local calls as a result of interconnection.
- (B) An interconnecting CTU must~~Interconnecting CTUs shall~~ provide other~~interconnecting CTU~~~~each other~~ 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~~~~Interconnecting CTUs shall~~ provide other interconnecting CTUs~~each other~~ Common Channel Signaling System Seven (~~SS7~~) connectivity where technically available.
- (D) ~~An interconnecting CTU is~~~~Interconnecting CTUs shall~~ be 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~~Interconnecting CTUs shall~~ agree to construct, ~~and/or~~ lease, and maintain the facilities necessary to connect ~~their~~ networks, either by having one CTU provide the entire facility or by sharing the construction and maintenance of the facilities necessary to connect ~~their~~ networks. The financial responsibility for construction and maintenance of such facilities ~~is shall be~~ borne by the party who constructs and maintains the facility, unless the parties involved agree to other financial arrangements. Each interconnecting CTU ~~is shall be~~ responsible for delivering its originating traffic to the mutually agreed upon~~mutually agreed upon~~ point of interconnection or points of interconnection. Nothing in this subparagraph~~herein~~ precludes a CTU from recovering the costs of construction and maintenance of facilities if such facilities are utilized~~used~~ by other CTUs.
- (E) ~~An interconnecting CTU must~~ ~~Interconnecting CTUs shall~~ establish joint procedures for troubleshooting the portions of jointly used~~their~~ networks

~~that are jointly used.~~ Each CTU ~~is shall be~~ 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 shall~~ provide intermediate transport arrangements between other interconnecting CTUs, upon request. A CTU providing intermediate transport ~~must shall~~ 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 will~~ contact other CTUs and arrange meetings, within 15 days of such request, ~~in an effort~~ to facilitate negotiations and provide a forum for discussion of network efficiencies and inter-company billing arrangements.
- (G) Each interconnecting CTU ~~is shall be~~ 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~~ ~~Interconnecting CTUs shall~~ allow ~~other interconnecting CTUs~~ ~~each other~~ 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 ~~and/or~~ appropriate governmental authority.

- (I) ~~An interconnecting CTU must~~~~Interconnecting CTUs shall~~ provide ~~other~~
~~interconnecting CTUs~~~~each other~~ physical interconnection in a non-
discriminatory manner. Physical collocation for the transmission of local
exchange traffic ~~must~~~~shall~~ 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~~~~shall~~ be implemented at the
option of the CTU requesting the interconnection.
- (J) Each interconnecting CTU ~~is~~~~shall~~ be 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~~~~Interconnecting CTUs shall~~ cooperatively
provide ~~each~~ 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~~~~shall~~ be provided
in accordance with national industry standards. For ~~a~~ billing interexchange
~~carrier~~~~carriers~~ for jointly provided switched access services, such billing
records shall 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~~CTUs shall~~ negotiate a mutually acceptable settlement process for billing IXC's for jointly provided switched access services.

(B) A CTU must~~CTUs shall~~ enter into mutual billing and collection arrangements with other CTUs that are comparable to those existing between ~~and~~/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 ~~his or her~~ local exchange service, that CTU must~~shall~~ 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~~should~~ 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~~shall~~ provide notification to the primary IXC of such disconnection.

(D) A CTU must~~All CTUs shall~~ cooperate with IXC's 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~~shall~~ not be unreasonably preferential, discriminatory, or prejudicial, and must~~shall~~ be non-

discriminatory. The following criteria ~~mustshall~~ be used to establish interconnection rates, terms, and conditions.

- (i) Local traffic of a CTU ~~thatwhich~~ originates and terminates within the mandatory single or multiexchange local calling area available under the basic local exchange rate of a single DCTU shall 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 ~~mustshall~~ 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 ~~mustshall~~ 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 ~~mustshall~~ 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 ~~mustDCTUs-shall~~ 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 ~~mustshall~~ 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 ~~mustshall~~ 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 ~~mustshall~~ 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 ~~mustshall—be~~ 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~~shall 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~~shall be not less favorable than the arrangements between DCTUs for similar EAS traffic.
- (III) A NCTU ~~must~~shall 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) (No change.)

(B) Establishment of rates, terms, and conditions.

- (i) ~~A CTU~~CTUs involved in interconnection negotiations ~~must~~shall 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~~~~pursuant to~~ 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 shall 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, ~~and/or~~ conditions ~~must~~ be made publicly available as provided in subsection (h) of this section.

- (e) **Minimum interconnection arrangements.**

- (1) ~~In accordance with~~~~Pursuant to~~ mutual agreements, interconnecting CTUs ~~must~~~~shall~~ 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 shall apply:
- (A) Repair services. For purposes of this section, a CTU ~~must~~~~shall~~ be required to provide repair services for its own facilities regardless of whether such facilities are used by the CTU for retail purposes, ~~or~~ 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, ~~and/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~~~~As a prerequisite to~~ providing local exchange telephone service to any customer or any other service ~~by which~~~~whereby~~ a customer may dial 9-1-1 ~~and thereafter, a CTU must meet the following requirements.~~
- (I) ~~A~~~~The~~ 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~~~~agreement(s)~~,

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~~The CTU is responsible for enabling each customer of the CTU~~all its customers~~ to dial the three digits 9,1,1 to access 9-1-1 service.
- (III) ~~A~~The CTU is responsible for providing the ANI to the appropriate CTU operating the ~~E~~911 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~~The 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 ~~and~~/or ALI. The appropriate 9-1-1

administrative entity or entities or the 9-1-1 network services provider, as applicable, ~~must~~shall 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~~shall 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~~Each CTU ~~must~~shall 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~~shall be maintained in a fashion to ensure that the information~~it~~ is accurate at a percentage as close to 100% as possible. For purposes of this clause, the term “accurate” ~~“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” ~~“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~~shall not ~~be held~~ responsible for erroneous information provided to it by a customer or another CTU.
- (III) An interconnecting CTU must~~Interconnecting CTUs shall~~ execute confidentiality agreements with ~~each~~ other interconnecting CTUs, as necessary, to prevent the unauthorized disclosure of unpublished or ~~/~~unlisted numbers. An interconnecting CTU must~~Interconnecting CTUs shall~~ 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~~shall provide non-discriminatory access to the master street address guide.

- (iii) ~~A~~Each CTU is responsible for developing a 9-1-1 disaster recovery service restoration plan with input from the appropriate 9-1-1 administrative ~~entity~~entities. This plan ~~must~~shall identify the actions to be taken in the event of a network-based 9-1-1 service failure. The goal of such actions ~~is~~shall be the efficient and timely restoration of 9-1-1 service. Each CTU ~~must~~shall 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~~~~Interconnecting CTUs shall~~ provide ~~each~~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~~~~interconnecting CTUs shall~~ provide ~~each~~other ~~interconnecting CTUs~~ and the appropriate 9-1-1 administrative ~~entity or~~ entities immediate notification of such outages.
- (v) Each NCTU's rates for 9-1-1 service to a public safety answering point ~~is~~shall be 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 ~~entity or~~ entities; and written approval from the appropriate 9-1-1 administrative ~~entity or~~ 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 ~~entity or~~ entities must~~shall~~ rely on the warrant of the CTU and the appropriate 9-1-1 entities.

(II)-(III) (No change)

(C)-(D) (No change.)

- (C) Operator services. An interconnecting CTU must~~Interconnecting CTUs shall~~ negotiate to ensure the interoperability of operator services between networks, including ~~but not limited to~~ 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~~Interconnecting CTUs shall~~ 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, ~~The telephone numbers and other appropriate information of the customers of NCTUs must~~shall be included on a non-discriminatory basis in ~~each~~the 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 to its customers shall~~ have each corresponding DCTU ~~listing~~listings available on a non-discriminatory basis. Each entry~~The entries~~ of NCTU customers in the DCTU white pages telephone directory ~~must~~shall be interspersed in correct alphabetical sequence among the entries of the DCTU customers and ~~must~~shall 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~~shall 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~~Listings of all customers 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~~shall be included in a separate section of the DCTU's white pages telephone directory at the option of the NCTU.

(iii) ~~A CTU must~~CTUs shall provide directory listings and related updates to the CTU or affiliate of the CTU that publishes~~its affiliate publishing~~ 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 The~~CTU or affiliate of the CTU that publishes~~its affiliate publishing~~ a white pages telephone directory on behalf of the CTU ~~must~~shall be responsible for providing all other CTUs with timely information regarding deadlines associated with its published white pages telephone directory.

(iv) ~~A CTU must~~CTUs shall, 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~~~~CTUs shall~~ not provide listings of subscribers desiring non-listed status for publication purposes.

- (v) White pages telephone directories ~~must~~~~shall~~ be distributed to ~~each customer~~~~all customers~~ 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 its affiliate publishing~~ the white pages telephone directory.
- (vi) A CTU or ~~affiliate of the CTU~~~~its affiliate~~ that publishes a white pages telephone directory on behalf of the CTU ~~must~~~~shall~~ provide ~~every other CTU~~ a single page ~~per CTU~~ in the information section of the white pages telephone directory; for ~~each~~~~the~~ 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~~~~shall~~ be arranged in alphabetical order. Additional access to the information section of the white pages telephone directory ~~are~~~~shall be~~ subject to negotiations.
- (vii) ~~A CTU~~ ~~CTUs~~ must provide information that identifies customers desiring non-listed ~~and/or~~ non-published telephone numbers ~~and/or~~ non-published addresses to the CTU or ~~affiliate of the CTU that publishes its affiliate publishing~~ a white pages telephone directory on behalf of the CTU and to the CTU maintaining the directory assistance database. ~~A~~~~The~~ CTU or ~~affiliate of the CTU that~~

~~publishes its affiliate publishing~~ a white pages telephone directory on behalf of the CTU ~~must~~shall not divulge such non-listed ~~and/or~~ non-published telephone numbers or addresses and the CTU maintaining the directory assistance database ~~must~~shall not divulge such non-published telephone numbers or addresses.

(viii) CTUs ~~must~~shall provide each other non-discriminatory access to directory assistance databases.

(2) At a minimum, interconnecting CTUs ~~must~~shall negotiate to ensure the following:

(A)-(E) (No change.)

(F) non-discriminatory handling, including billing, of mass announcement/audiotext calls including, ~~but not limited to,~~ 900 and 976 calls;

(G)-(I) (No change.)

(f) **Negotiations.**

(1) ~~A negotiating party, including a CTU, must~~CTUs and other negotiating parties shall engage in good-faith negotiations and cooperative planning as necessary to achieve mutually agreeable interconnection arrangements.

(2) Before terminating its first commercial telephone call, ~~each~~ CTU requesting interconnection ~~must~~shall 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~~the customers 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, ~~in an effort 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~~shall:

(A)-(D) (No change.)

- (6) At any point during the negotiations required under this subsection, ~~any~~ CTU or negotiating party may request the commission ~~designee~~designee(s) to participate in the negotiations and to mediate any differences arising in the course of the negotiation.

- (7) ~~An interconnecting CTU may~~Interconnecting CTUs 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~~shall not be accelerated.

- (8) Any disputes arising under or pertaining to negotiated interconnection agreements ~~must~~may be resolved ~~in accordance with~~pursuant to 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, ~~and~~/or conditions for interconnection with any CTU or negotiating party may petition the

commission to arbitrate any unresolved issues. ~~To~~~~In order to~~ initiate the arbitration procedure, a negotiating CTU:

- (A) ~~must~~~~shall~~ file its petition with the commission on or between 135 and 160 days during the period from the 135th to the 160th day (inclusive) 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~~~~shall~~ provide the identity of each CTU ~~and/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~~~~shall~~ provide all relevant documentation concerning the unresolved issues;
 - (D) ~~must~~~~shall~~ provide all relevant documentation concerning the position of each of the negotiating parties with respect to those issues;
 - (E) ~~must~~~~shall~~ provide all relevant documentation concerning any other issue discussed and resolved by the negotiating parties; and
 - (F) ~~must~~~~shall~~ 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 ~~as it wishes~~ within 25 days after the commission receives the petition.

- (3) The compulsory arbitration process ~~must~~shall be completed ~~not~~ 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~~may be resolved ~~in accordance with~~pursuant to 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~~shall file ~~each~~any agreement, adopted by negotiation or by compulsory arbitration, with the commission. The commission ~~will~~shall make such ~~an~~ agreement available for public inspection and copying within ten days after the agreement is approved by the commission ~~in accordance with~~pursuant to 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~~it generally offers within the state ~~in accordance with~~pursuant to 47 ~~U.S.C. United States Code~~ §252(f) (1996). The commission ~~will~~shall make such ~~a~~ statement available for public inspection and copying within ten days after the statement is approved by the commission ~~in accordance with~~pursuant to subparagraph (E) of this paragraph.

- (C) The commission ~~will~~shall reject an agreement, in whole or in part, ~~(or any portion thereof)~~ adopted by negotiation if it finds that:
- (i)-(ii) (No change.)
- (D) The commission ~~will~~shall reject an agreement, in whole or in part, ~~(or any portion thereof)~~ adopted by compulsory arbitration, under subsection (g) of this section, in accordance with ~~pursuant to~~ guidelines found in 47 ~~U.S.C. United States Code~~ §252(e)(2)(B) (1996).
- (E) The commission ~~will~~shall review the statement of generally available terms filed under subparagraph (B) of this paragraph, pursuant to guidelines found in 47 United States Code §252(f) (1996). The submission or approval of a statement under this paragraph ~~doess~~shall 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 ~~pursuant to~~ 47 ~~U.S.C. United States Code~~ §251(c)(1) (1996).
- (2) Rates, terms ~~and~~/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 ~~and~~/or among DCTUs which relate to interconnection arrangements for similar traffic must~~shall~~ be disclosed to the CTU, subject to commission-approved non-disclosure or protective agreement. A non-redacted version of the same agreement must~~shall~~ 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 =the~~ CTU's tariffs ~~precludes~~~~shall be interpreted as precluding~~ a customer of ~~aany~~ CTU from purchasing local exchange service from more than one CTU at a time. ~~A CTU is prohibited from connecting, disconnecting, or moving~~~~No CTU shall connect, disconnect, or move~~ 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~~~~In the event that~~ a CTU ceases ~~its~~ operations, ~~the CTU is responsible for notifying~~~~it is the responsibility of the CTU to notify~~ the commission and ~~each customer of the CTU~~~~all of the CTU's customers~~ at least 61 working days in advance that ~~each customer's~~~~their~~ service will be terminated. The notification ~~must~~~~shall~~ include a listing of all alternative service providers available to customers in the exchange and shall specify the date on which service will be terminated.
- (3) **Requirements for service installations.** ~~A DCTU~~~~DCTUs~~ that interconnect with ~~an NCTU is~~~~NCTUs shall be~~ responsible for meeting the installation of service requirements under §26.54 of this title in providing service to the NCTU. NCTUs ~~must~~~~shall~~ 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~~shall 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~~shall be completed ~~in~~ 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~~DCTUs' resale facilities obtained through Public Utility Regulatory Act §60.041, the NCTU ~~must~~shall complete service orders within 30 calendar days from ~~the~~ request ~~for~~ service, unless a later date is agreed to by the customer.
- (D) ~~A~~The DCTU ~~must~~shall not discriminate between the DCTU's customers and the customers of an NCTU~~its customers and NCTUs~~ if the DCTU is able to install service in less than the time permitted under §26.54 of this title.

§26.276. Unbundling.

(a)-(b) (No change.)

(c) **Unbundling requirements.**

- (1) **Unbundling ~~in accordance with~~ pursuant to current FCC requirements.** Each ILEC that is subject to this section ~~must~~shall unbundle as specified in subparagraphs (A) and (B) of this paragraph. An ILEC with interstate tariffs in effect ~~must~~shall 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~~shall 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~~herein precludes the commission from requiring further unbundling of local exchange company services, including the services unbundled ~~in accordance with~~pursuant to this paragraph.
 - (A) The ILEC's network ~~must~~shall be unbundled to the extent ordered by the FCC in compliance with its open network architecture requirements; and
 - (B) Signaling for tandem switching ~~must~~shall 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~~ pursuant to future FCC requirements.** An ILEC ~~must~~shall unbundle its network or /services ~~as defined in the term~~

~~“unbundling” in §26.5 of this title (relating to Definitions)~~ for intrastate services to the extent ordered, in the future, by the FCC for interstate services. An ILEC with interstate tariffs in effect ~~must~~shall 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~~shall also not impose a charge or rate element that is not included in its interstate tariffs for unbundling. Nothing ~~in this paragraph~~herein precludes the commission from requiring further unbundling of local exchange company services, including the services unbundled ~~in accordance with~~pursuant to this paragraph.

(d) **Costing and pricing of services in compliance with this section.**

- (1) **Cost standard.** Services unbundled in compliance with this section ~~must~~shall be subject to the following cost standard.
 - (A) The cost standard for unbundled services ~~must~~shall 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~~§23.91 of this title (relating to Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility Services), as applicable, ~~must~~shall file LRIC studies ~~in accordance with~~pursuant to that rule for unbundled components specified in subsection (c)(1) of this section.

- (C) For any ILEC that is subject to §26.214 or §26.21523.91 of this title, the cost standard for unbundled services required under subsection (c)(2) of this section ~~mustshall~~ be the long run incremental costs as prescribed by §26.214 or pursuant to §26.21523.91 of this title, as applicable.
- (D) The long run incremental cost standard ~~does mustshall~~ 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 ~~pursuant to~~ paragraph (2)(B) of this subsection.
- (2) **Pricing standard.** Services unbundled in compliance with this section ~~mustshall~~ 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 ~~mustshall~~ amend its intrastate rates, terms and conditions to be consistent with subsequent revisions in its interstate tariffs providing for unbundling in accordance with the ~~pursuant to~~ 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 §26.21523.91 of this title may adopt the rates of another ILEC that are developed in accordance with ~~pursuant to~~ 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~~pursuant to subparagraph (B) of this paragraph, the following requirements ~~shall~~ apply to any service approved under this section:

(i) Unless waived or modified by the presiding officer, the service ~~must~~shall 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~~shall be a rebuttable presumption that the rate of an unbundled component is reasonable.

(iii) The proposed rates and terms of the service ~~must~~shall 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~~shall be subject to ~~§26.214 or §26.215 –the pricing rule~~making referred to in §23.91(p) of this title, as applicable, to the same extent as any other service offered by an ILEC subject to ~~the applicable provision~~the pricing rule.

- (e) **Basket assignment.** An ILEC electing for incentive regulation under PURA Chapter 58 ~~must~~shall, in its compliance tariff filed ~~in accordance with~~pursuant to 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~~shall 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~~shall be not later than 30 days after the filing date, unless suspended. Tariff revisions filed in accordance with~~pursuant to~~ this ~~paragraph must~~subsection shall 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~~shall 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~~shall be not later than 30 days after the filing date, unless suspended. Tariff revisions filed in accordance with~~pursuant to~~ this ~~paragraph must~~subsection shall 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 shall~~ unbundle its network ~~or /services~~ ~~in accordance with~~~~pursuant to~~ the bona fide request within 90 days from the date of receipt of the bona fide request or ~~has shall have~~ the burden of demonstrating the reasons for not unbundling ~~in accordance with~~~~pursuant to~~ the bona fide request.
- (4) **Filings to comply with subsection (d)(2)(A) of this section.** An ILEC proposing rates pursuant to subsection (d)(2)(A) ~~mustshall~~ 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 ~~mustshall~~ be not later than 30 days after the filing date, unless suspended. Tariff revisions filed ~~in accordance with~~~~pursuant to~~ this ~~paragraph mustshall~~ 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 ~~mustshall~~ 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, PO Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission’s Office of Customer Protection at (512) 936-7120 or toll free at (888) 782-8477. Hearing- and speech-impaired individuals ~~with text telephones (TTY)~~ may contact the commission ~~through at (512) 936-7136 or may reach the commission's toll free number by calling~~ Relay Texas at ~~(800) 735-2989(800) 735-2988.~~”

- (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 ~~mustshall~~ request approval of an unbundled service by filing an application that complies with the requirements of this section. ~~AIn addition to copies required by other commission rules, one~~ copy of the application ~~mustshall~~ be delivered to the ~~commission's __Office of Regulatory Affairs, Legal Division, and one copy to the~~ Office of Public Utility Counsel. The application ~~mustshall~~ 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 are in conformity~~ with the requirements in subsections (c), (d), and (e) of this section, as applicable;
- (B)-(E)(No change.)

(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 ~~and~~/or common costs, if the rates are not at parity with the carrier's interstate rates;

(G)-(I) (No change.)

- (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~~shall file with the commission an application complying with the requirements of this section. ~~A~~In addition to copies required by other commission rules, one copy of the application ~~must~~shall be delivered to the commission's Office of Regulatory Affairs, Legal Division, and one copy mustshall be delivered to the Office of Public Utility Counsel. The application ~~must~~shall 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~~service(s) and the rates, terms, and conditions under which the ~~service is~~service(s) are proposed to be offered and an affidavit from the general manager or an officer of the ILEC approving the proposed service;

(D)-(E)(No change.)

(h) **Commission processing of application.**

- (1) **Administrative review.** An application considered under this section is eligible for administrative review~~may be reviewed administratively~~ 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~~shall be according to the requirements in subsection (f) of this section.
- (B) The application ~~will~~shall be ~~reviewed~~examined for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant ~~will~~shall 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~~shall 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 time deadlines ~~will~~shall be 30 days ~~determined from the 30th 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~~being administratively reviewed~~, ~~the~~ commission staff and the staff of the Office of the Public Utility Counsel (OPUC) may submit requests for information to the ILEC. Answers~~Six copies of all answers~~ to such requests for information ~~must~~shall

be filed with ~~the commission~~Central Records and ~~a one~~ copy ~~must~~shall be provided to ~~OPUC~~the Office of Public Utility Counsel 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~~ The commission staff ~~must~~shall and ~~OPUC~~the Office of Public Utility Counsel 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~~shall issue an order approving, denying, or docketing the ILEC's application.

(2) **Approval or denial of application.** The application ~~will~~shall 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~~must docket the application.

(3) **Standards for docketing.** The application may be docketed in accordance ~~with~~pursuant to §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~~shall 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 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~~shall 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~~shall 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~~shall include a complete statement of the ILEC's arguments and factual support for that request. The presiding officer ~~will~~shall rule on the request expeditiously.

§26.403. Texas High Cost Universal Service Plan (THCUSP).

- (a) (No change.)
- (b) **Application.** This section applies to telecommunications providers that have been designated ETPs by the commission in accordance with~~pursuant to~~ §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 ~~shall~~ 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~~pursuant to~~ 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~~pursuant to~~ a customer specific contract or that is otherwise not served in accordance with~~pursuant to~~ a tariff, to qualify as a business line, the service must be provided in accordance with~~pursuant to~~ 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~~pursuant to 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~~shall not be both.
- (3) **Eligible telecommunications provider (ETP)** -- A telecommunications provider designated by the commission ~~in accordance with~~pursuant to §26.417 of this title.
- (4) (No change.)
- (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~~shall 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) (No change.)

- (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)-(J) (No change.)

- (2) **Subsequent determinations.**

(A)-(B) (No change.)

(e) **Criteria for determining amount of support under THCUSP.** The commission ~~will~~shall 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~~shall 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~~shall 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~~pursuant to~~ 47 C.F.R. §54.312(a). The initial per-line monthly support amount for a wire center ~~must~~shall 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~~pursuant to~~

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

~~mustshall~~ not be included in this calculation. If the application for deregulation for any such exchanges subsequently is denied by the commission, the ILEC ETP ~~mustshall~~, 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 ~~mustshall~~ 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 ~~mustshall~~ be reduced by 25% of the additional revenue calculated ~~in accordance with~~~~pursuant to~~ this paragraph in each year of the transition period. This reduction ~~mustshall~~ be accomplished by reducing support for each wire center served by the ETP proportionally.

- (4) **Portability.** The support amounts established ~~in accordance with~~~~pursuant to~~ this section are applicable to all ETPs and are portable with the customer.
- (5) **Limitation on availability of THCUSP support.**
 - (A) THCUSP support ~~mustshall~~ not be provided in a wire center in a deregulated market that has a population of at least 30,000.
 - (B) (No change.)
- (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~~shall 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~~shall an electing ILEC seek or receive THCUSP funding after January 1, 2017 even if ~~the electing ILEC~~it 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~~shall 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~~2013, 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~~2016 from the THCUSP is reduced:
 - (A) on January 1, ~~2024~~2017, to 75 percent of the level of support the ILEC ~~was~~is eligible to receive on December 31, ~~2023~~2016;
 - (B) on January 1, ~~2025~~2018, to 50 percent of the level of support the ILEC ~~was~~is eligible to receive on December 31, ~~2023~~2016; ~~and~~

- (C) on January 1, ~~2026~~2019, to 25 percent of the level of support the ILEC ~~was~~
eligible to receive on December 31, ~~2023~~2016; ~~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~~~~pursuant to~~ §26.405(f)(1) of this title, ~~on or~~
before January 1, ~~2027~~2019.
- (g) **Reporting requirements.** An ETP that receives support ~~in accordance with~~~~pursuant to~~
this section ~~must~~~~shall~~ report the following information:
- (1) **Monthly reporting requirement.** An ETP ~~must~~~~shall~~ report the following to the
TUSF administrator on a monthly basis:
- (A)-(B) (No change.)
- (2) **Quarterly filing requirements.** An ETP ~~must~~~~shall~~ file quarterly reports with the
commission showing actual THCUSP receipts by study area.
- (A) Reports ~~must~~~~shall~~ 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~~~~shall~~ 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~~~~pursuant to~~ paragraph (3) of this
subsection ~~must~~~~shall~~ be publicly available.

- (3) **Annual reporting requirements.** An ETP ~~must~~shall report annually to the TUSF administrator that it is qualified to participate in the THCUSP.
- (4) **Other reporting requirements.** An ETP ~~must~~shall 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)-(b) (No change.)

(c) **Definitions.** The following words and terms when used in this section ~~shall~~ 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~~pursuant to 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~~pursuant to a customer specific contract or that is otherwise not served ~~in accordance with~~pursuant to a tariff, to qualify as a business line, the service must be provided ~~in accordance with~~pursuant to 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~~pursuant to 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~~shall not be both.
- (3) **Eligible telecommunications provider (ETP)** -- A telecommunications provider designated by the commission ~~in accordance with~~pursuant to §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).
- (4) (No change.)
- (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~~shall 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~~shall be used.

- (ii) If no unique physical street address and no physical 911 address are available, the business or residential customer's service address ~~mustshall~~ 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 ~~mustshall~~ be described by an ETP using GPS coordinates. Multiple buildings within a single area of land under common operation or use ~~doshall~~ not qualify as separate service addresses, even if the GPS coordinates for each building are different.

(B) (No change.)

(7) (No change.)

- (d) **Service to be supported by the ~~SRILEC USP~~Small and Rural ILEC Universal Service Plan.** The ~~SRILEC USP~~Small and Rural ILEC Universal Service Plan ~~mustshall~~ 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~~Small and Rural ILEC Universal Service Plan.** The commission ~~willshall~~ 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 ~~mustshall~~ 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 ~~mustshall~~ 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 ~~mustshall~~ 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 ~~mustshall~~ be determined by the commission in a contested case proceeding. An increase to an existing rate ~~mustshall~~ 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 ~~mustshall~~ be determined in the contested case proceeding.

(3) **Annual reductions to the ~~SRILEC USPS~~Small and Rural ILEC Universal Service Plan per-line support.** As part of the contested case proceeding referenced in paragraph (2) of this subsection, for each small or rural ILEC ETP, the commission ~~willshall~~ 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~~shall 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~~shall be reduced by 25% of the additional revenue calculated ~~in accordance with~~pursuant to this paragraph in each year of the transition period, unless specified otherwise ~~in accordance with subparagraph~~pursuant to paragraph (2)(B) of this subsection. This reduction ~~must~~shall 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**~~~~**Small and Rural ILEC Universal Service Plan**~~ support payments to ETPs. The TUSF administrator ~~must~~shall disburse monthly support payments to ETPs qualified to receive support ~~in accordance with~~pursuant to this section.

(1) **Payments to small or rural ILEC ETPs.** The payment to each small or rural ILEC ETP ~~must~~shall 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~~shall 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~~shall 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~~2013, 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~~2017 from the SRILEC USP is reduced:

- (A) on January 1, ~~2025~~2018, to 75 percent of the level of support the ILEC ETP is eligible to receive on December 31, ~~2024~~2017;
- (B) on January 1, ~~2026~~2019, to 50 percent of the level of support the ILEC ETP is eligible to receive on December 31, ~~2024~~2017; ~~and~~
- (C) on January 1, ~~2027~~2020, to 25 percent of the level of support the ILEC ETP is eligible to receive on December 31, ~~2024~~2017; ~~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~~pursuant to~~ §26.405(f)(1) of this title, on or before January 1, 2028~~2020~~.

(h) **Reporting requirements.** An ETP eligible to receive support under this section must~~shall~~ report information as required by the commission and the TUSF administrator.

- (1) **Monthly reporting requirement.** An ETP must~~shall~~ report the following to the TUSF administrator on a monthly basis:

(A)-(B) (No change.)

- (2) **Quarterly filing requirements.** An ETP must~~shall~~ file quarterly reports with the commission showing actual SRILEC USP receipts by study area.

(A) Reports must~~shall~~ 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~~shall~~ 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~~pursuant to~~ paragraph (3) of this subsection must~~shall~~ be publicly available.

- (3) **Annual reporting requirements.** An ETP must~~shall~~ report annually to the TUSF administrator that it is qualified to participate in the SRILEC USPS~~Small and Rural ILEC Universal Service Plan~~.

- (4) **Other reporting requirements.** An ETP ~~must~~shall 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)-(b) (No change.)

(c) **Definitions.** The following words and terms when used in this section ~~shall~~ 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~~pursuant to~~ 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~~pursuant to~~ a customer specific contract or that is otherwise not served in accordance with~~pursuant to~~ a tariff, to qualify as a business line, the service must be provided in accordance with~~pursuant to~~ 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~~pursuant to~~ 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~~shall not be both.

- (3) **Eligible telecommunications provider (ETP)** -- A telecommunications provider designated by the commission ~~in accordance with~~pursuant to §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).
- (4) (No change.)
- (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~~shall 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~~shall 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~~shall 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~~shall be described by an ETP using GPS coordinates. Multiple buildings within a single area of land under common operation or use ~~must~~shall not qualify as separate service addresses, even if the GPS coordinates for each building are different.

(B) (No change.)

(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~~~~pursuant to~~ subsection (f)(1) of this section, the commission ~~will~~shall 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~~shall 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) (No change.)
- (B) Using ~~Version 7 of the~~ current version of the National Broadband Map, the commission ~~will~~shall 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~~shall 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~~shall 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~~National Broadband Map~~ 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~~National Broadband Map~~ 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~~pursuant to~~ subsection (f) of this section, the commission will~~shall~~ set new monthly per-line support amounts for each exchange served by a petitioning ILEC ETP. The new monthly per-line support amounts must~~shall~~ be effective beginning with the first disbursement following a commission order entered in accordance with~~pursuant to~~ subsection (f)(2) of this section, except that the new amounts must~~they shall~~ not be effective earlier than January 1, 2024~~2017~~ for an exchange with service supported by the THCUSP or earlier than January 1, 2025~~2018~~ 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~~pursuant to~~ 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~~shall 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~~pursuant to subsection (f)(1) of this section and which is not included in the petition, the commission ~~will~~shall 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~~pursuant to 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~~shall set a monthly per-line support amount according to the following criteria.

(A) The initial monthly per-line support amounts for each exchange ~~must~~shall be equal to:

- (i) the amount that the ILEC ETP was eligible to receive on December 31, ~~2023~~2016 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~~2017 for an ILEC ETP that receives support from the SRILEC USP and that has not filed a request ~~in accordance with~~pursuant to subsection (g) of this section; or
- (iii) the new monthly per-line support amounts calculated ~~in accordance with~~pursuant to subsection (g) of this section for an ILEC ETP that

has filed a request ~~in accordance with~~pursuant to subsection (g) of this section.

- (B) Initial monthly per-line support amounts for each exchange ~~must~~shall 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 paragraph~~pursuant to 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 subparagraph~~pursuant to 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~~shall not exceed:
- (i) the monthly per-line support that the ILEC ETP ~~is~~was eligible to receive on December 31, ~~2023~~2016, if the petition ~~is~~was filed before January 1, ~~2024~~2016;
 - (ii) 75 percent of the monthly per-line support that the ILEC ETP ~~is~~was eligible to receive on December 31, ~~2023~~2016, if the petition ~~is~~was filed on or after January 1, ~~2024~~2016, and before January 1, ~~2025~~2017;

- (iii) 50 percent of the monthly per-line support the ILEC ETP ~~is~~was eligible to receive on December 31, ~~2023~~2016, if the petition ~~is~~was filed on or after January 1, ~~2025~~2017, and before January 1, ~~2026~~2018; ~~or~~
- (iv) 25 percent of the monthly per-line support that the ILEC ETP ~~is~~was eligible to receive on December 31, ~~2023~~2016, if the petition ~~is~~was filed on or after January 1, ~~2026~~2018, and before January 1, ~~2027~~2019; ~~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~~shall not exceed:

- (i) the monthly per-line support that the ILEC ETP ~~is~~was eligible to receive on December 31, ~~2024~~2017, if the petition ~~is~~was filed before January 1, ~~2025~~2017;
- (ii) 75 percent of the monthly per-line support that the ILEC ETP ~~is~~was eligible to receive on December 31, ~~2024~~2017, if the petition ~~is~~was filed on or after January 1, ~~2025~~2017, and before January 1, ~~2018~~2026;
- (iii) 50 percent of the monthly per-line support the ILEC ETP ~~is~~was eligible to receive on December 31, ~~2024~~2017, if the petition ~~is~~was

filed on or after January 1, ~~2026~~2018, and before January 1, ~~2027~~2019;~~or~~

(iv) 25 percent of the monthly per-line support that the ILEC ETP ~~is~~was eligible to receive on December 31, ~~2024~~2017, if the petition ~~is~~was filed on or after January 1, ~~2027~~2019, and before January 1, ~~2028~~2020;~~:- 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 paragraph~~pursuant to subsection~~ (f)(1) of this section.

(F) **Portability of support.** The support amounts established in accordance with~~pursuant to~~ 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~~pursuant to~~ this subsection. A

petition filed ~~in accordance with~~pursuant to this subsection ~~must~~shall include the information necessary to reach the determinations specified in this subsection.

- (B) An ILEC ETP filing a petition ~~in accordance with~~pursuant to this subsection ~~must~~shall provide notice as required by the presiding officer ~~in accordance with~~pursuant to §22.55 of this title (relating to Notice in Other Proceedings). At a minimum, notice ~~must~~shall be published in the *Texas Register*.
- (C) A petition filed ~~in accordance with~~pursuant to this subsection ~~must~~shall 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)-(ix) (No change.)
- (D) A summary filed ~~in accordance with~~pursuant to this subsection ~~must~~shall be filed publicly. Workpapers filed ~~in accordance with~~pursuant to this subsection may be filed publicly or ~~confidentially~~under seal.
- (E) Upon receipt of a petition ~~in accordance with~~pursuant to this section, the commission ~~will~~shall 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~~shall 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~~shall 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~~shall 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~~shall not be 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~~pursuant to this subsection ~~must~~shall 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~~pursuant to 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~~shall 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~~shall 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~~shall 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 ~~pursuant to~~ 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 ~~pursuant to~~ this section is ~~shall remain~~ subject to the reporting requirements prescribed by ~~of~~ §26.403(g) or §26.404(h) of this title.
- (i) **Additional Financial Assistance.** Nothing in this section prohibit ~~shall be interpreted to prohibit~~ 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 ~~pursuant to~~ §26.408 of this title (relating to Additional Financial Assistance (AFA)).
- (j) **Service to be supported.** The services to be supported in accordance with ~~pursuant to~~ the section are subject to the same definitions and limitations as those prescribed by ~~set out in~~ §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

(a) (No change.)

(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)).

~~(1) **Small ILECs.** 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)).~~

~~(2) **Other ETPs providing service in small or rural ILEC study areas.** This section applies to a telecommunications provider, other than a small ILEC that provides service in small ILEC study areas that have been designated as an ETP by the commission in accordance with §26.417 of this title.~~

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

(1)-(4) (No change.)

(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 ~~factorsthings~~ 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~~commission-prescribed forms~~ that ~~is~~are 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 15th 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)-(J) (No change.)

(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 ~~also~~ 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~~Annual reports~~ 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) (No change.)

(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~~commission staff~~ adjusted rate of return.

(2) **Commission staff's review of an annual report.**

(A) (No change.)

- (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~~commission-staff adjusted rate of return:
- (A)-(C) (No change.)
- (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~~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~~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~~commission~~staff~~ adjusted rate of return within Category 2.
- (3) **Category 3** - For a small ILEC that has a reported or ~~commission staff~~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~~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~~irrespective 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)-(D) (No change.)

(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~~commission-staff~~ adjusted rate of return in Category 2 or Category 3, may file a petition to contest the commission staff~~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~~commission-staff~~ adjustments the small ILEC is in Category 3, may file a petition to contest the commission staff~~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~~~~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)-(4) (No change.)

- (5) **Timing for contested cases.** The commission ~~will~~~~must~~ grant or deny an application filed under subsection not later than ~~120 days~~~~the 120th day~~ 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) (No change.)

(i) **Confidentiality of information.**

(1) (No change.)

- (2) A third party may only access confidential information filed according to subsection (h) of this section, or ~~a proceeding~~~~proceedings~~ related to that filing, if the third party is subject to an appropriate protective order.

(3) (No change.)

(j) **Commission adjustment of the small ILEC's revenue requirement and Small and Rural Incumbent Local Exchange Company Universal Service Plan support.**

(1) (No change.)

(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~~~~Small and Rural Incumbent Local Exchange Company Universal Service Plan~~ 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~~~~Small and Rural Incumbent Local Exchange Company Universal Service Plan~~ support by 12. Each small ILEC that has ~~SRIUSP~~~~Small and Rural Incumbent Local Exchange Company Universal Service Plan~~ support adjusted under this section must provide the TUSF administrator with a copy of the final order indicating the adjusted amount of ~~SRIUSP~~~~Small and Rural Incumbent Local Exchange Company Universal Service Plan~~ support.

~~(3) **SRIUSPSmall and Rural Incumbent Local Exchange Company Universal Service Plan support payments to ETPs other than small ILECs.** The SRIUSPSmall and Rural Incumbent Local Exchange Company Universal Service Plan support for ETPs other than a small ILEC will be determined by calculating the per-line support for each small ILEC's study area based on the most recent monthly support using December line counts for the small ILEC. The payment to each ETP other than a small ILEC will be calculated by multiplying the computed~~

~~per line amount for the given small ILEC study area by the number of eligible lines served by the ETP in such study area for the month.~~

(k)-(l) (No change.)

§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 ~~16 TAC~~ §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 ~~16 TAC~~ §26.403 of this title. This section expires on December 31, 2023.
- (c) (No change.)
- (d) **Identification of exchanges for review.**
- (1) No later than April 30 of each year, commission staff must report:
- (A) Each exchange~~The exchanges~~ 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~~previous~~ year.

(2) (No change.)

(e) (No change.)

(f) **Competitive ETP's response to commission staff's application.**

(1)-(2) (No change.)

(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)-(j) (No change.)

§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~~shall 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~~shall 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~~shall meet the mandatory minimum standards defined in §26.5 of this title (relating to Definitions) and ~~must include further shall consist of~~ the following:
- (A)-(E)(No change.)
 - (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)-(I) (No change.)

- (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) (No change.)
- (2) **Conditions for interstate service.** The TRS carrier ~~must~~shall not be reimbursed from the Texas Universal Service Fund (TUSF) for the cost of providing interstate TRS. Interstate TRS ~~must~~shall be funded through the interstate jurisdiction as mandated by the Federal Communications Commission. Separate funds and records ~~must~~shall be maintained by the TRS carrier for intrastate TRS and interstate TRS.
- (3) **Rates and charges.** The following rates and charges ~~shall~~ apply to TRS:
- (A) Local calls. The calling and called parties ~~must~~shall 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~~shall discount its tariffed intrastate rates by 50% for TRS users.
 - (C) Access charges. A telecommunication provider must~~Telecommunications providers shall~~ not impose access charges on calls that make use of this service or on calls that~~and which~~ 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~~~~providers shall~~ 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~~~~shall~~ 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~~technologically advanced~~ telecommunications system, and all other factors listed in the commission's request for proposals. The commission ~~will~~~~shall~~ consider each proposal in a manner that does not disclose the contents of the proposal to competing ~~offeror~~~~offerers~~. The commission's determination ~~will~~~~shall~~ include evaluations of charges for the service, service enhancements proposed by the ~~offeror~~~~offerers~~, and technological sophistication of the network proposed by the ~~offeror~~~~offerers~~. The commission ~~will~~~~shall~~ make a written award of the contract to the ~~offeror~~~~offerer~~ whose proposal is the most advantageous to the state.

~~(2) — Location. The operator centers used to provide statewide TRS shall be located in Texas.~~

~~(23)~~ **Contract administration.**

(A) Contract amendments. All recommendations for amendments to the contract ~~must~~~~shall~~ 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~~shall approve any amendment that will increase the cost of TRS.

- (B) Reports. ~~Each~~The TRS ~~carrier~~carrier(s) and telecommunications ~~provider~~providers ~~must~~shall submit reports of their activities relating to the provision of TRS upon request of the commission or the Relay Texas administrator.
- (C) Compensation. ~~Each~~The TRS ~~carrier~~carrier(s) ~~must~~shall 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~~shall include the TRS costs that are not paid by the calling or the called party, except the TRS carrier ~~must~~shall 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~~shall be subject to a reasonable limitation as determined by the commission.
 - (iii) The TRS carrier ~~must~~shall submit a monthly report to the commission justifying its claims for reimbursement under the

contract. Upon approval by the commission, the TUSF ~~must~~shall make a disbursement in the approved amount.

(d) **Special features for TRS.**

- (1) (No change.)
- (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) (No change.)
- (3) The commission ~~will~~shall 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~~shall include the considerations listed in subsection (c)(1) of this section.

- (e) **Advisory Committee.** The commission ~~will~~shall 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~~shall serve as a liaison between ~~the~~ RTAC and the commission. The

Relay Texas administrator ~~mustshall~~ ensure that ~~the~~ RTAC receives clerical and staff support, including a secretary or court reporter to document RTAC meetings.

- (1) **Composition.** The commission ~~willshall~~ appoint RTAC members based on recommended lists of candidates submitted by the organizations named as follows.

~~The~~ RTAC ~~mustshall~~ be composed of:

(A)-(E)(No change.)

(F) one deaf and blind person recommended by the Texas Deaf ~~or~~ Blind Association;

(G)-(J) (No change.)

- (2) **Conditions of membership.** The term of office of each RTAC member ~~mustshall~~ be two years. A member whose term has expired ~~mustshall~~ continue to serve until a qualified replacement is appointed. In the event a member cannot complete his or her term, the commission ~~willshall~~ appoint a qualified replacement to serve the remainder of the term. RTAC members ~~mustshall~~ serve without compensation but ~~mustshall~~ 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 ~~mustshall~~ undertake the following responsibilities:

(A)-(D) (No change.)

- (4) **Committee activities report.** After each RTAC meeting, the Relay Texas administrator ~~mustshall~~ prepare a report to the commission regarding ~~the~~ RTAC activities and recommendations.

(A) The Relay Texas administrator ~~must~~shall file in Central Records under Project Number 13928, and provide to each commissioner, a report containing:

(i)-(ii) (No change.)

(iii) a list of items, recommended by ~~the~~ 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) (No change.)

(5) **Evaluation of RTAC costs and effectiveness.** The commission ~~will~~shall evaluate the advisory committee annually. The evaluation ~~will~~shall 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 ~~the~~ RTAC, TRS, or the equipment distribution program ~~are~~shall not be 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)-(C) (No change.)

§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 ~~shall~~ 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~~~~shall 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 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~~~~shall~~ 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 shall~~ be eligible to receive TUSF support in accordance with pursuant to §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~~pursuant to~~ §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~~pursuant to~~ 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 and~~ 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)-(F) (No change.)

(2) **ILECs.** If the telecommunications provider is an ILEC, as defined in PURA §51.002(10), it ~~must~~shall be eligible to receive TUSF support pursuant to §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~~pursuant to the Public Utility Regulatory Act (PURA) Chapter 58 or 59 it ~~must~~shall either:

(i)-(ii) (No change.)

(B) If the ILEC is not regulated ~~under~~pursuant to PURA Chapter 58 or 59 it ~~must~~shall 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~~shall be proportional, based on equivalent minutes of use, to reductions in intraLATA toll rates, and those reductions ~~must~~shall be offset by equal disbursements from the universal

service fund under PURA §56.021(1). This subparagraph expires August 31, 2007.

(d) (No change.)

(e) **Proceedings to designate telecommunications providers as ETPs.**

(1) (No change.)

(2) ~~To~~In order to receive support under §26.403 or §26.404 of this title for exchanges purchased from an unaffiliated provider, the acquiring ETP ~~must~~shall 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~~shall 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, ~~those exchanges for which it was receiving support~~.

(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~~shall 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~~shall 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~~Public Utility Commission’s Consumer~~Customer~~ Protection Division at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals ~~with text telephones (TTY)~~ may contact the commission ~~at (512) 936-7136, or use~~through Relay Texas ~~at (800) 735-2989 to reach the commission’s toll free number (888) 782-8477.~~”

- (B) Contents of application. A telecommunications provider seeking to be designated as an ETP for a high cost service area in this state ~~must~~shall file with the commission an application complying with the requirements of this section. ~~A~~In addition to copies required by other commission rules, one copy of the application ~~must~~shall be delivered to ~~the commission staff and one copy must~~shall be delivered to the Office of Public Utility Counsel.

- (i) Telecommunications providers. The application ~~must~~shall:

(I)-(VII) (No change.)

- (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;

(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)-(XI) (No change.)

(ii) ILECs. If the applicant is an ILEC, in addition to the requirements of clause (i) of this subparagraph, the application ~~must~~shall 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~~may be reviewed administratively~~ 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~~shall 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~~shall be ~~reviewed~~examined for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant ~~will~~shall 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~~shall 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~~shall be determined 30 days from the ~~30th~~-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~~being administratively reviewed~~, the commission staff and OPUC~~the staff of the Office of Public Utility Counsel~~ may submit requests for information to the applicant. Answers~~Three copies of all answers~~ to such requests for information ~~must~~shall be provided to ~~the~~ commission staff and OPUC~~the Office of Public Utility Counsel~~ 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~~The commission~~ staff ~~must~~shall and OPUC~~the Office of Public Utility Counsel~~ 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~~shall issue an order approving, denying, or docketing the application.

(B) Approval or denial of application. The application ~~will~~shall be approved by the presiding officer if it meets the following requirements.

(i)-(iv) (No change.)

(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~~shall 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~~shall 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~~Three copies of all answers to requests for information ~~must~~shall 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~~shall be scheduled. A hearing on the merits ~~will~~shall be limited to issues of eligibility. The application ~~will~~shall 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~~shall permit a telecommunications provider to relinquish its ETP designation in any area served by more than one ETP upon:

(A)-(C) (No change.)

(2) (No change.)

(3) **Relinquishment for non-compliance.** The TUSF administrator ~~must~~shall 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~~shall revoke the ETP designation of any telecommunications provider determined not to be in compliance with subsection (c) of this section.

(B) (No change.)

(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~~shall 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~~shall provide

notice in the *Texas Register* of the auction. The announcement ~~must~~shall 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~~pursuant to §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) (No change.)

(ii) information to substantiate that the bidder meets the eligibility requirements in subsection (c)(1) of this section; and

(iii) (No change.)

(B) The TUSF administrator ~~must~~shall 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) (No change.)

(i) **Requirements for annual affidavit of compliance to receive TUSF support.** An ETP serving a rural or non-rural study area ~~must~~shall 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~~shall 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~~shall~~ 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~~pursuant to 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) (No change.)
- (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~~pursuant to 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~~~~pursuant to~~ 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~~~~shall~~ be designated as eligible to receive federal universal service support if it:

(1)-(2) (No change.)

- (e) (No change.)

- (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~~ ~~shall~~ designate, upon application, more than one ETC in a service area so long as each additional carrier meets the requirements of ~~paragraph~~~~subsections~~ (c)(1) and subsection (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 ~~paragraph~~~~subsections~~ (c)(2) and subsection (d) of this section if the commission finds that the designation is in the public interest.

- (g) **Proceedings to designate ETCs.**

(1) (No change.)

- (2) ~~To~~In order to receive support under this section for exchanges purchased from an unaffiliated carrier, the acquiring ETC ~~must~~shall 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~~shall 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~~shall 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~~shall 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~~Public Utility Commission's ~~Consumer~~Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals ~~with-text-telephones~~

~~(TTY)~~ may contact the commission ~~at (512) 936-7136, or use~~through Relay Texas at (800) 735-2989 ~~to reach the commission's toll free number (888) 782-8477.~~”

- (B) Contents of application for each common carrier seeking ETC designation. A common carrier that seeks to be designated as an ETC ~~must~~shall file with the commission an application complying with the requirements of this section. ~~A~~In addition to copies required by other commission rules, one copy of the application ~~must~~shall ~~be delivered to the commission's Regulatory Division and one copy shall~~ be delivered to the Office of Public Utility Counsel (OPUC). The application ~~must~~shall:

(i)-(viii) (No change.)

- (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~~shall file with the commission an application complying with the requirements of this section. ~~A~~In addition to copies required by other commission rules, one copy of the application ~~shall be delivered to the commission staff and one copy must~~shall be delivered to the Office of Public Utility Counsel. The application ~~must~~shall:

(i)-(iii) (No change.)

(2) **Commission processing of application.**

- (A) **Administrative review.** An application considered under this section is ~~eligible for administrative review~~may be reviewed administratively 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~~shall 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~~shall be ~~reviewed~~examined for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant ~~will~~shall 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~~shall 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~~shall be determined 30 days from the ~~30th~~-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~~being administratively reviewed, the~~ commission staff and the staff of OPUC~~the Office of Public Utility Counsel~~ may submit requests for information to the telecommunications carrier. Three copies of all answers to such requests for information ~~must~~shall be provided to ~~the~~ commission staff and OPUC~~the Office of Public Utility Counsel~~

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 ~~the~~ commission staff with written comments or recommendations concerning the application. ~~Commission~~The ~~commission~~ staff ~~must~~shall and ~~OPUC~~the Office of Public Utility Counsel 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~~must~~shall~~ issue an order approving, denying, or docketing the application.

(B) Approval or denial of application.

- (i) An application filed ~~in accordance with~~pursuant to paragraph (1)(B) of this subsection ~~will~~shall be approved by the presiding officer if the application meets the following requirements:
 - (I)-(VI) (No change.)
- (ii) An application filed ~~in accordance with~~pursuant to paragraph (1)(C) of this subsection ~~will~~shall be approved by the presiding officer if the application meets the following requirements:
 - (I)-(III) (No change.)

- (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~~shall docket the application.
- (D) **Review of the application after docketing.** If the application is docketed, the effective date of the application ~~will~~shall 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~~shall 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~~shall be scheduled. A hearing on the merits ~~will~~shall be limited to issues of eligibility. The application ~~will~~shall 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~~shall 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~~shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof and ~~will~~shall 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~~shall permit a common carrier to relinquish its designation as an ETC in any area served by more than one ETC upon:
- (A)-(C) (No change.)
- (2) (No change.)
- (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~~shall 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~~st~~ 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~~st~~ each

year, the commission will certify these carriers' eligibility for FUSF to the FCC and the Federal Universal Service Fund Administrator by October 1~~st~~ of each year.

- (2) **Failure to file.** Common carriers failing to file an affidavit by September 1~~st~~ 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~~shall apply~~.
- (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~~pursuant to~~ 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.

- (1) **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~~will not be permitted to~~

~~disaggregate~~ its FUSF support unless it is ordered to do so by the commission in accordance with~~pursuant~~ to the terms of paragraph (5) of this subsection.

(A)-(D) (No change.)

- (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~~will not be permitted to disaggregate~~ its FUSF support unless it is ordered to do so by the commission in accordance with~~pursuant to~~ the terms of paragraph (5) of this subsection.

- (3) **Requirements for rural ILECs' disaggregation plans.** In accordance with~~Pursuant to the~~ federal requirements, in 47 C.F.R. §54.315(e)~~(e)~~ a rural ILEC's disaggregation plan, whether submitted in accordance with~~pursuant to~~ paragraph (1)(B), (C) or (D) of this subsection, must meet the following requirements:

(A) (No change.)

(B) the ratio of the per line FUSF support between disaggregation zones for each disaggregated category of FUSF support must~~shall~~ remain fixed over time, except as changes are required pursuant to paragraph (5) of this subsection;

(C) the ratio of per line FUSF support must~~shall~~ be publicly available;

(D) the per line FUSF support amount for each disaggregated zone or wire center must~~shall~~ 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~~shall~~ 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~~shall 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) (No change.)
- (4) **Additional requirements for self-certification of a disaggregation plan.** In accordance with federal requirements~~Pursuant to 47 C.F.R. §54.315(d)(2)~~, 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)-(B) (No change.)
 - (C) a clearly specified per-line level of FUSF support for each category~~pursuant to 47 C.F.R. §54.315(d)(2)(iii)~~;
 - (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) (No change.)
- (5) (No change.)
- (6) **Effective dates of disaggregation plans.** The effective date of a rural ILEC's disaggregation plan ~~must~~shall be as specified by federal law~~in 47 C.F.R. §54.315~~.

§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~~**Resale** ETPs as defined by §26.412(b)(2) of this title ~~must~~**shall** 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~~**shall** 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~~**shall** include the entire study area of such small or rural ILEC.

- (c) **Criteria for designation of ETPs.** A ~~resale~~**Resale** ETP as defined by §26.412(b)(2) of this title ~~must~~**shall** be eligible to receive TUSF support ~~in accordance with~~**pursuant to** §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)-(3) (No change.)

- (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~~**shall** 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~~**shall** 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~~**Public Utility Commission’s** ~~Consumer~~**Customer** Protection Division at (512) 936-7120

or (888) 782-8477. Hearing- and speech-impaired individuals ~~with text telephones (TTY)~~ may contact the commission ~~at (512) 936-7136, or use~~ through Relay Texas ~~at (800) 735-2989 to reach the commission's toll-free number (888) 782-8477."~~

- (B) **Contents of application.** A certificated provider of local exchange telephone service seeking to be designated as a ~~resale~~ Resale ETP ~~must~~ shall file with the commission an application complying with the requirements of this section. ~~A~~ In addition to copies required by other commission rules, one copy of the application ~~must~~ shall be delivered to ~~the commission staff and one copy must~~ shall be delivered to the Office of Public Utility Counsel (OPUC). The application ~~must~~ shall:

(i)-(vii)(No change.)

(2) Commission processing of application.

- (A) **Administrative review.** An application considered under this section ~~is eligible for administrative review~~ may be reviewed administratively 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~~ shall be no earlier than 30 days after notice is published in the *Texas Register*.
- (ii) The application ~~will~~ shall be ~~reviewed~~ examined for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant ~~will~~ shall 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~~shall be no earlier than 30 days after notice is published in the *Texas Register*.

- (iii) While the application is being administratively reviewed, ~~the~~ commission staff and OPUC~~the staff of the Office of Public Utility Counsel~~ may submit requests for information to the applicant.

Three copies of all answers to such requests for information ~~must~~shall be provided to ~~the~~ commission staff and OPUC~~the Office of Public Utility Counsel~~ 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~~The commission~~ staff ~~must~~shall, and OPUC~~the Office of Public Utility Counsel~~ 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~~shall 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)-(iv) (No change.)

- (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~~shall 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~~shall be automatically suspended until an order is issued in the proceeding granting the application. Three copies of all answers to requests for information ~~must~~shall 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~~shall be scheduled. A hearing on the merits ~~will~~shall be limited to issues of eligibility. The application ~~will~~shall 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~~shall notify the commission when the TUSF administrator is aware that a ~~resale~~Resale ETP is not in compliance with the requirements of subsection (c) of this section. The commission

~~will~~shall revoke the ETP designation of any ~~resale~~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~~Resale ETP serving a rural or non-rural study area ~~must~~shall 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~~Resale ETP that receives disbursements from the TUSF ~~must~~shall 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~~shall be the annual compliance affidavit approved by the commission.

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

- (a) (No change.)
- (b) **Application.** This section applies to ~~aall~~ certificated telecommunications utility ~~(CTU)utilities (CTUs)~~.
- (c) (No change.)
- (d) **Requirement to prepare plan and reporting and notification requirements.**
 - (1) **Network Services Plan.** Before providing service, a 9-1-1 network services provider ~~mustshall~~ prepare and file with the commission a network services plan. The plan ~~mustshall~~ be updated upon a change affecting a 9-1-1 administrative entity ~~or entities~~, 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~~~~pursuant to~~ this section believed to contain proprietary or confidential information ~~mustshall~~ be identified as such, and the commission may enter an appropriate protective order. The network services plan ~~mustshall~~ include:
 - (A) a description of the network services and infrastructure for equipment and software being used predominantly for the purpose of providing 9-1-1 services; including ~~but not limited to~~, alternate routing, default routing,

central office identification, and selective routing, ESN, and transfer information;

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

(C) (No change.)

(2) **Database Services Plan.** Before providing service, a 9-1-1 database management services provider ~~must~~shall prepare and file with the commission a database services plan. The plan ~~must~~shall be updated upon a change affecting a 9-1-1 administrative entity ~~or entities~~, 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~~pursuant to this section believed to contain proprietary or confidential information ~~must~~shall be identified as such, and the commission may enter an appropriate protective order. The database services plan ~~must~~shall include:

(A) (No change.)

(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~~shall show the overlay of rate center, county, and city boundaries;

(C)-(E)(No change.)

- (3) **Other notification requirements.** A CTU ~~must~~shall notify ~~each~~shall affected 9-1-1 administrative ~~entity~~entities at least 30 days prior to activating or using a new NXX in a rate center or upon the commencement of providing local telephone service in any rate center.
- (e) **Network interoperability and service quality requirements.** ~~To~~In order to ensure network interoperability and a consistent level of service quality the following standards ~~shall~~ apply.
- (1) A CTU operating in the state of Texas ~~must~~shall:
- (A)-(B) (No change.)
- (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) The 9-1-1 network services provider shall provide a P.01 grade of service, or its equivalent as applicable, to the PSAP.~~
- ~~(D)~~(E) (No change.)
- (2) A telecommunications provider operating in the state of Texas ~~must~~shall:
- (A) Provide to ~~each~~shall applicable 9-1-1 administrative ~~entity~~entities the name, title, address, and telephone number of the telecommunications provider's 9-1-1 contacts including ~~but not limited to~~, 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 ~~mustshall~~ be notified of any change to a telecommunications provider's designated 9-1-1 contact personnel within five ~~workingbusiness~~ days.

- (B) Develop a 9-1-1 disaster recovery and service restoration plan with input from the applicable 9-1-1 administrative entity ~~or entities~~, CSEC, and the commission.

(f) **Database integrity.** ~~ToIn order 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 ~~mustshall~~:

- (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 ~~mustshall~~ 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)-(D) No change.

- (2) A 9-1-1 database management services provider operating in the state of Texas ~~must~~shall:
- (A) Provide copies of the ~~MSAG~~MSAG(s) for ~~each~~the 9-1-1 administrative ~~entity the 9-1-1 database management services provider~~entities it serves to any CTU authorized to provide local exchange service within the jurisdiction of those 9-1-1 administrative entities. The 9-1-1 database management services provider ~~must~~shall make all updates to the MSAG electronically available to CTUs within 24 hours of ~~the~~an 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~~shall 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~~may not charge a 9-1-1 administrative entity ~~for~~, through tariffed or non-tariffed charges, ~~for~~ the preparation and transfer of files from the CTU's service order system to be used in the creation of 9-1-1 call routing data and 9-1-1 ALI data.
- (h) No change.
- (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 ~~and/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 ~~or entities~~; and written approval from the appropriate 9-1-1 administrative entity ~~or 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 entity ~~must or entities shall~~ 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 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 ~~include 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.

(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~~pursuant to 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~~pursuant to such ~~a~~ 9-1-1 service agreement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 28TH DAY OF SEPTEMBER 2023 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA GONZALES**