

APPENDIX C

Background information and Frequently Asked questions

BACKGROUND INFORMATION

I. Municipal Responsibilities

- A) Report 1998 Base Amount to the PUC using PUC forms.
- B) Report allocation formula to the PUC using PUC forms.
- C) Cities choosing the state wide option in the base amount should notify CTPs of that choice.

II. Fee-per-access line. Beginning March 1, 2000, all telecommunication franchises in Texas will be based on a fee-per-access line method. The PUC established three categories of access lines: Category 1 - Residential lines and point-to-point bugler alarm lines; Category 2 - Non-residential switched lines; Category 3 - Residential and Non-residential point-to-point lines, excluding lines in Category 1. Each category (or type) of line will have a rate. The rate when applied to the total number of access lines by category within that municipality shall be equal to the Base Amount.

For example: Base Amount = Category 1 rate * Number of Lines in Category 1 in your municipality +
Category 2 rate * Number of lines in Category 2 in your municipality +
Category 3 rate * Number of lines in Category 3 in your municipality.

The number of lines in each category will be reported by the CTPs on a city-by-city basis. The Base Amount must be reported by the municipality. The rates will be established, taking into account the Base Amount, number of access lines in each category and the allocation formula.

III. Compensation after March 1, 2000. After March 1, 2000, each CTP will compensate the municipality quarterly, based on the number of lines within the municipality and the rate for each category of line calculated monthly. For example, if Acme Telephone Company has 12,000 Category 1 lines, 5,000 Category 2 lines, and 200 Category 3 lines in the Cut-and-Shoot, and the rates for each type of line is as follows: Category 1 = \$0.98 Category 2 = \$2.00, and Category 3 = \$2.20, the monthly compensation from Acme Telephone Company to Cut-and-Shoot =

$$(12,000 * \$0.98) + (5,000 * \$2.00) + (200 * \$2.20) = \$11,760 + \$10,000 + \$440 = \$22,200$$

IV. Certificated Telecommunications Providers (CTP). Only lines belonging to CTPs within a municipality will be utilized for calculating compensation. A CTP is an entity that has obtained a COA, SPCOA, or a CCN certificate from the PUC to provide local exchange telephone service in the State of Texas. Only CTPs are governed by HB 1777. There may be other telecommunication providers in your municipality who are not CTPs and are therefore not governed by HB 1777. The non-certificated telecommunications providers will be subject to any existing contracts or ordinances or franchise agreements they may have with your municipality. The PUC has provided a list of CTPs to you. No other utilities (cable, electric, etc.) are covered by this bill.

V. Option to terminate. HB 1777 rates apply only to those CTPs that opt into the rates and methods determined by the PUC. A CTP that wants to opt into the PUC-established rates, must notify the municipality and PUC by December 1, 1999 that it is terminating any existing contract or franchise agreements or ordinance it has with the municipality. If a CTP does not make this notification to a municipality by December 1st, 1999, the existing contract or franchise agreement or ordinance will remain in effect, until it expires on its own terms. After expiration, the CTP will be governed by the PUC-established rates and methods.

VI. Base Amount. The 1998 compensation, reported by a municipality to the PUC, upon which future compensation is established is called the Base Amount. The methods by which the Base Amount is computed is not the same for all municipalities. For most municipalities, it will include the total compensation received from all CTPs within the municipality in calendar year 1998. Some municipalities can include compensation from newly annexed areas, escalation provisions, and in-kind services or facilities. Certain municipalities have other options in determining their Base Amounts. Read the section below, identify your municipality type, and determine your Base Amount option(s).

VII. Calculating the Base Amount

Municipality Type

Base Amount Options

(i) The municipality was in existence on January 12, 1999 **AND** had an effective franchise agreement or ordinance regarding compensation from CTPs on January 12, 1999 **AND** is located in a county with population of more than 25,000.
There is only one option for these municipalities.

Sum of (Franchise + Escalation + Licensing + Permit + Application + Other fees + In-kind services) received from CTPs in 1998, including newly annexed areas.

(ii) The municipality is located in a county with a population of 25,000 or less, **OR** the municipality did not have an effective franchise agreement or ordinance regarding compensation from CTPs on January 12, 1999, **OR** the municipality was not in existence on Jan. 12, 1999, **OR** did not receive any compensation in 1998.
These municipalities choose 1 of 3 options for Base Amount.

Option 1
 Statewide average rates * Number of 1998 access lines within your municipality

Option 2
 Use another municipality's Base Amount (in the same or adjacent county) as your Base Amount.

Option 3
 Sum of (Franchise + Licensing + Permit + Application + Other fees) received from CTPs in 1998.

VIII. Allocation of Base Amount over the categories of Access lines

The allocation formula determines what portion of the Base Amount a municipality wants to allocate each category of access line. The percentage allocated to each category will influence the fee-per-access line rate for that category of access line. **First**, determine whether you want to provide an allocation formula **OR** let the PUC determine an allocation formula for your municipality. **Second**, if you choose to do your own allocation, determine what that allocation formula is. **Third** report your allocation decision to the PUC using PUC forms.

A city that does not elect to make its own allocation will be bound by the default allocation formula adopted by the PUC. If a city elects to change its allocation thereafter, it may do so by providing notice to its CTPs and the PUC according to the procedure contained in H.B. 1777, but may do so only one time every 24 months.

Important considerations. (a) Allocating too much of the Base Amount to a category that has very few lines will likely result in an exorbitant rate for that category; (b) Allocating to a category that has no lines at all will result in an under recovery of the base amount; (c) Allocating too little to a category that has a large number of lines will burden other smaller categories, with a higher proportion of the compensation.

IX. Rates/Fee-per-access line

The rate for each category of access line, is a function of the base amount, the municipality's allocation formula (or the PUC's allocation formula) and the number of access lines in that municipality. The following example ties these concepts together.

Base amount reported by the municipality.	\$50,000		
Allocation formula reported by the municipality.	Allocate 45% of Base amount to Category 1	Allocate 30% of Base amount to Category 2	Allocate 25% of Base amount to Category 3
Actual Dollar amount allocated for three categories.	\$22,500	\$15,000	\$12,500
Access line count reported by all the CTPs in that municipality.	20,000 lines in Category 1	7,500 lines in Category 2	4,000 lines in Category 3
Rates or fee-per-access line.	$(\$22,500/20,000) =$ \$1.12 for Category 1	$(\$15,000/7,500) =$ \$2 for Category 2	$\$12,000/4,000 =$ \$3 for Category 3

The allocation formula is crucial to the determination of rates or fee-per-access line in your municipality! Many municipalities have expressed concern that since they do not have access line count information, they may not have a clear picture of the final rates when choosing an allocation formula. To address this concern, the PUC as proposed an alternative allocation method. This method gives a city a little more control over the final rates. Under this method, instead of providing the PUC the % of dollars to be allocated to each category of access line, the municipality will provide the ratios of the final rates they desire between the categories of access lines. For instance, a city might choose a ratio such as 1:2:3. The PUC, will use a spreadsheet program to translate these ratios into appropriate allocation percentages, and then determine the rates. Therefore, a ratio of 1:2:3 may translate into rates such as: \$1.5 : \$3:00 : \$4.50. It could also translate into \$0.50: \$1:00 : \$1.50, depending upon the municipality's access line count. It is important that you work with your CTP to determine the number of access lines in your municipality and choose an allocation method or formula that suits your city. At the least, CTPs should be able to determine the number of residential vs business lines in your municipality.

Frequently Asked Questions About HB 1777 (76th Leg)

What is the general purpose of House Bill 1777?

HB 1777 was enacted by the 76th Legislature (Spring 1999) as a mechanism to increase competition in the telecommunications industry by establishing a uniform method for certificated telecommunications providers (CTPs) to compensate municipalities for the use of public rights-of-way.

Why was this bill necessary?

As competition increases in the state's telecommunications industry, it is important that there are no barriers to competition for existing companies or new companies entering the marketplace. HB 1777 provides for fair compensation for cities while ensuring that fees are competitively neutral and non-discriminatory.

What is a certificated telecommunications provider?

A CTP is any telecommunications provider that has been granted one of the following certificates by the Public Utility Commission of Texas (PUC) to provide telecommunications services in Texas:

- COA – Certificate of Operating Authority
- SPCOA - Service Provider Certificate of Authority
- CCN – Certificate of Convenience and Necessity

How do I know if a telecommunications provider is certificated?

The PUC will provide you with a list of CTPs.

How does HB 1777 affect municipalities and what fees they can charge CTPs in the future?

Municipalities can no longer require CTPs to pay any compensation other than fees authorized in the bill for use of rights-of-way to provide telecommunication services in that municipality.

When did this law go into effect?

The bill went into effect on Sept. 1, 1999. Franchise agreements between CTPs and cities are not invalidated by HB 1777, but CTPs were allowed to opt out of existing agreements by Dec. 1, 1999. If the CTP did not opt out, the franchise agreement is in effect until its expiration date.

Can the city still require a construction or inspection permit of a CTP?

Yes, the city can require a construction or inspection permit; however, it cannot charge a fee for the permits. The terms of the permits must be consistent with construction permits issued to other persons excavating in a public right-of-way.

Can cities still impose regulations on CTPs?

Cities can no longer require CTPs to have a main office in their city. They can no longer require CTPs to file reports that are not related to right-of-way issues or require the provider to offer the city services or facilities free or at prices below market value. They cannot inspect business records of CTPs and they cannot require city approval of transfer of ownership or control of a CTPs business. Cities do have the authority to impose police-power regulations relating to the protection of public health and safety.

How will CTPs compensate cities for use of a right-of-way?

Beginning March 1, 2000, all telecommunications franchise fees in Texas will be based on a fee-per-access line method. Each category of access line will have a rate. The rate for each category will be multiplied by the number of lines in that category in the municipality to determine fees.

How often will a city be compensated by the CTPs?

CTPs shall compensate municipalities quarterly an amount that is calculated monthly based on the access line rate by category established by the Commission.

How many categories of access lines are there?

There are three categories of access lines. Refer to your allocation form for these three categories.

How will the per-line access fee be determined?

The PUC will determine a “base amount” from information on a city’s 1998 compensation and allocation formula to determine a fee-per-access line rate for each city. In most cases, the base amount includes total compensation received from all CTPs in calendar year 1998. Some municipalities can include compensation from newly annexed areas, escalation provisions and in-kind services or facilities. The base amount will be used to determine the per-access-line fee. The rate may be different for each city.

How are in-kind services figured into the base amount?

In-kind services are valued at 1 percent of the 1998 revenues unless a municipality can establish that the services or facilities received in 1998 had greater value.

Do cities have other options for determining the base amount?

Cities that did not have a franchise agreement in effect on Jan. 12, 1999, cities that did not exist on Jan. 12, 1999, cities located in counties with a population of fewer than 25,000, and cities that did not receive any compensation from CTPs in 1998 can use one of the following options to determine their base amounts:

- The revenue generated by applying the statewide average fee per line on a per-category basis times the number of access lines; or
- The revenue received by a similarly sized city in the same or an adjacent county; or
- 1998 franchise revenues from CTPs.

If a municipality chooses to use the base amount of a similarly sized municipality, are there any restrictions?

Yes. Both cities must have the same dominant carrier. If AT&T is the dominant carrier in your city it must also be the dominant carrier in the city whose base amount you choose to mirror.

How often can a city change its allocation method?

A city may change its allocation method once every 24 months.

What happens if a city does not file a proposed allocation?

If the city does not file a proposed allocation, the PUC will establish the allocation among the customer classes of access lines for that city.

When will the first payments under HB 1777 be received?

The PUC must establish a per-access line rate by category for each city by March 1, 2000. CTPs are to make quarterly payments not later than 45 days after the end of the first quarter. Cities should expect their first payments in mid-August, 2000.

How often will payments be adjusted for changes in the number of access lines?

The compensation will be adjusted each quarter for access line growth in the previous quarter.

How will the PUC know if the number of access lines increases or decreases?

CTPs must submit a quarterly access line count update with increases or decreases and must compensate the municipality accordingly.

Will fees be adjusted for inflation?

Yes. Beginning March 1, 2002, the PUC will adjust the access line fees annually. Compensation will be adjusted by half of the increase in the Consumer Price Index.

Does HB 1777 affect all of a city's franchise agreements?

No. It applies only to certificated telecommunications franchise agreements. It does not include gas, electric, cable TV or other municipal franchise agreements. Non-certificated telecommunications providers in a municipality will be subject to any existing contracts or ordinances or franchise agreements they have with the city.

FAQ on State wide average method

Is the statewide average fee-per-line rate of the CTP the same as the fee-per-line rate for my municipality?

Absolutely No. The statewide average fee-per-line rates are calculated only for a CTP and not for a municipality. The only reason the statewide average rates are calculated is to determine the base amount for a municipality that chooses Option 1.

Then how will my fee-per-line rates be calculated if I choose Option 1?

If you choose Option 1, we will first determine your base amount using the method given in the background information. Your fee-per-line rates are based on the statewide average fee-per-line for each category of access line of the certificated telecommunications provider with the greatest number of access lines in that municipality, multiplied by the total number of access lines in each category within the boundaries of the municipality.