

The Public Utility Commission of Texas (commission) adopts an amendment to §26.467 relating to Rates, Allocation, Compensation, Adjustments and Reporting with no changes to the proposed text as published in the May 12, 2000 *Texas Register* (25 TexReg 4268). The amendment is necessary to correct an inadvertent error regarding the due date for the first-time filing of the quarterly access line count reports as §26.467 was originally adopted. This amendment is adopted under Project Number 20935.

The commission received comments on the proposed amendment from Mr. Max Wiesen. The focus of Mr. Wiesen's comments was the costs incurred by consumers and the benefits that will be gained by consumers regarding the implementation of §26.467. Mr. Wiesen argues that the recovery of the municipal franchise fees by the certificated telecommunications providers (CTPs) is a rate design issue that the commission has ignored. Specifically, Mr. Wiesen contends that the commission's policy reflected in §26.467 conflicts with the provisions of the Public Utility Regulatory Act (PURA) of 1997. Mr. Wiesen asserts that the commission has permitted a CTP to recover more franchise fees than is authorized under PURA.

*Commission Response*

This amendment was proposed to correct an inadvertent error in a date within §26.467; this is the only change proposed to §26.467. Mr. Wiesen's comments address issues outside the scope of

this proceeding. Proper notice pursuant to Texas Government Code §2001.024 has not been provided in order for the commission to consider any changes based upon Mr. Wiesen's comments.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2000) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure. This proposed rule is also authorized by House Bill 1777, 76th Legislature, Regular Session (1999), Local Government Code §283.55 and §283.058.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002, Local Government Code §283.055 and §283.058.

**§26.467. Rates, Allocation, Compensation, Adjustments and Reporting.**

- (a) **Purpose.** This section establishes the following:
- (1) rates for categories of access lines;
  - (2) default allocation for municipalities;
  - (3) adjustments to the base amount and allocation;
  - (4) municipal compensation; and
  - (5) associated reporting requirements.
- (b) **Application.** The provisions of this section apply to certificated telecommunication providers (CTPs) and municipalities in the State of Texas.
- (c) **Rate determination.** The sum of the amounts derived from multiplying the rate for each category of access line by the total number of access lines in that category in a municipality shall be equal to the base amount. The rate for each of the access line categories established pursuant to §26.461 of this title (relating to Access Line Categories) shall be calculated using a 1998 access line count in general accordance with the following formula:

B = Total base amount for 1998.
A1 = Allocation by percentage to Category 1 access lines.
A2 = Allocation by percentage to Category 2 access lines.
A3 = Allocation by percentage to Category 3 access lines.
L1 = Number of access lines in Category 1.
L2 = Number of access lines in Category 2.
L3 = Number of access lines in Category 3.
R1 = Fee per access line rate for Category 1.
R2 = Fee per access line rate for Category 2.
R3 = Fee per access line rate for Category 3.
$R1 = (A1*B)/L1$
$R2 = (A2*B)/L2$
$R3 = (A3*B)/L3$
$B = (L1*R1) + (L2*R2) + (L3*R3)$

(d) **Estimating a 1998 access line count.** If a CTP does not provide an actual 1998 access line count, the commission shall use the CTP's 1999 access line count, reported pursuant to §26.465 of this title (relating to Methodology for Counting Access Lines and Reporting Requirements for Certificated Telecommunications Providers), to derive an estimated 1998 access line count.

(1) **Estimating access line count for category 1 (residential) access lines.** The estimated statewide growth rate for category 1 access lines in 1999 is 4.5%. This percentage is determined using the statewide growth rate for residential access lines as reported to the Texas Legislature in the 1997 and 1999 reports entitled "Scope of Competition in Telecommunications Markets." The commission shall estimate a municipality's 1998 access line count for category 1 by discounting 4.5% from the 1999 line count for category 1 lines reported by a CTP.

- (2) **Estimating access line count for category 2 (non-residential) and category 3 (point-to-point) access lines.** The estimated statewide growth rate for category 2 and category 3 access lines in 1999 is 7.0%. This percentage is determined using the statewide growth rate for business access lines as reported to the Texas Legislature in the 1997 and 1999 reports entitled "Scope of Competition in Telecommunications Markets." The commission shall estimate a municipality's 1998 access line count for category 2 and category 3 by discounting 7.0% from the 1999 line count for category 2 and category 3 lines reported by a CTP.
- (3) **Municipal request for exception.**
- (A) No later than March 15, 2000, a municipality may request the use of a municipality-specific growth rate(s), by category, for estimating its 1998 access line count, instead of using the estimated statewide growth rates determined under paragraphs (1) and (2) of this subsection. The municipality's request shall include its proposed growth rates(s), along with proof and methodology for deriving the growth rate(s), from public and verifiable sources.
- (B) No later than March 15, 2000, a municipality that requests to use a municipality-specific growth rate(s) shall provide a copy of its filing to all CTPs that have filed access line counts for the municipality.
- (C) No later than March 31, 2000, any CTP that has filed access line counts for that municipality may file objections to the municipality's proposed

growth rate(s), if any. In order to be considered, an objection must include actual 1998 line count data for that municipality.

- (D) Until resolution of the request approval process, the estimated statewide growth rate(s) determined under paragraphs (1) and (2) of this subsection shall be used to determine the municipality's 1998 access line count. Upon resolution of any objections to the request approval process, the commission shall develop a new access line count for 1998 incorporating the new growth rate(s), by category, as appropriate.

(e) **Default allocation.** The commission's default allocation shall be a ratio of 1:2.3:3.5 for access line categories 1, 2, and 3 respectively. This default allocation represents an average of all allocation ratios filed by municipalities with the commission pursuant to §26.463 of this title (relating to Calculation and Reporting of a Municipality's Base Amount).

- (1) The commission shall establish access line rates for municipalities using the default allocation unless a municipality has filed its own allocation pursuant to §26.463 of this title.
- (2) The access line rates established by the commission for municipalities using the default allocation shall remain in effect until a municipality updates its initial allocation pursuant to subsection (g) of this section or revises its allocation pursuant to subsection (h) of this section.

- (f) **Initial rates.** No later than March 1, 2000, the commission shall establish rates for each category of access line in a municipality. These rates shall be considered to be initial rates. The initial rates shall be implemented no later than 90 days from the date the commission establishes the rates. These initial rates shall remain in effect until the rates are updated pursuant to subsection (g) of this section or revised pursuant to subsection (h) of this section.
- (g) **Updated rates.** No later than April 14, 2000, the commission shall establish updated rates for each category of access line in a requesting municipality. The initial rates established under subsection (f) of this section shall be updated to incorporate municipal filings pursuant to paragraph (1) of this subsection and/or CTP filings pursuant to paragraph (2) of this subsection, as appropriate. Subject to approval by the commission, the updated municipal and CTP information shall be used to establish updated access line rates. The updated rates shall be in effect until revised pursuant to subsection (h) of this subsection.
- (1) **Updates to municipal base amount filings.** No later than March 31, 2000, a municipality may update its base amount and allocation filed with the commission pursuant to §26.463 of this title. No later than March 31, 2000, a municipality that filed a request to update its base amount and/or allocation shall forward a copy of its filing to all CTPs who have filed access line counts for the municipality.

- (A) Updates to base amount. A municipal filing for updates to base amount shall use a methodology for calculating the base amount that is consistent with §26.463 of this title, and shall include appropriate justification for the update. Appropriate justification may include:
- (i) receipt of late payments from CTPs attributable to 1998 usage of rights-of-way;
  - (ii) reduction to judgment of disputed payments attributable to 1998 usage of rights-of-way;
  - (iii) settlement of disputed payments attributable to 1998 usage of rights-of-way;
  - (iv) eligibility under effective agreements or ordinances to receive a known and measurable amount due to specifically prescribed fee rate escalations provisions for the period between January 1, 2000 and March 1, 2000; and
  - (v) an inadvertent base amount computational error.
- (B) Updates to allocation. A municipality that has filed with the commission its own allocation pursuant to §26.463 of this title may file an updated allocation no later than March 31, 2000.
- (2) **Updates to CTP access line counts.** No later than March 15, 2000, a CTP may request to update its access line count filed with the commission pursuant to §26.465 of this title. A CTP's request for updates to access line count shall use a methodology for counting access lines that is consistent with §26.465 of this title,



and shall include appropriate justification for the update. Appropriate justification may include, but is not limited to:

- (A) an inadvertent access line count computational error;
- (B) reconciliation of reported retail and resold access line lines; and
- (C) access line counting issues associated with merger, sale, or transfer of CTPs.

(3) **Choosing lower than maximum rate(s).** The rates obtained by applying the allocation to the base amount and dividing the amounts allocated to each category by the appropriate number of access lines in that category in a municipality shall be considered to be maximum rates for a municipality. No later than March 31, 2000, a municipality that wishes to choose lower access line rate(s) than the maximum initial rates established under subsection (f) of this section, shall notify the commission and all CTPs that filed access line counts for that municipality of the lower access line rate(s) it chooses. If a municipality's request to choose lower initial rate(s) is higher than its updated rates, the updated rates shall remain in effect until revised pursuant to subsection (h) of this section.

(h) **Revised rates.** No later than October 15 of each calendar year, upon request from a municipality pursuant to paragraphs (1) and (2) of this subsection, the commission shall establish revised access line rates for each category of access line in a municipality, as applicable. A CTP shall apply the revised rates to access lines in a municipality in

January of the next calendar year and compensate a municipality pursuant to the revised rates.

- (1) **Adjustments within established rates.** No later than September 1 of each calendar year, a municipality may change its rates within the maximum rates by notifying the commission and all CTPs in that municipality that its wishes to revise its access line rate for the next calendar year. In its notification to the commission and the CTPs, the municipality shall indicate the rates that it wishes to have the commission apply in the next calendar year. Upon such notification, the commission shall revise the rates accordingly.
- (2) **Revising allocation formula.** No later than September 1 of each calendar year, and not more than once every 24 months, a municipality may petition a modification of the default allocation or its own allocation by notifying the commission and all affected CTPs in the municipality. In its notification to the commission and the CTPs, the municipality shall designate the allocation that it wishes to have the commission apply in the next calendar year.
  - (i) **Resolution of municipal allocations.**
    - (1) The commission shall implement a municipality's allocation unless, the commission determines that the allocation is not just and reasonable, is not competitively neutral, or is discriminatory.
    - (2) No later than March 15, 2000 any affected CTP may complain regarding a municipality's initial allocation filed pursuant to §26.463 of this title. No later

than April 7, 2000 any affected CTP may complain regarding a municipality's updated allocation filed pursuant to subsection (g)(1)(B) of this section. No later than September 15 of any calendar year any affected CTP may complain regarding a municipality's revised allocation filed pursuant to subsection (h)(2) of this section.

- (3) Where the market price of a telecommunications service is less than or equal to the amount derived from multiplying the access line rates with the number of access lines used to provide that service, the allocation used to develop the access line rate shall be presumed to be discriminatory, not just and reasonable and not competitively neutral.
  
- (j) **Consumer price index (CPI) adjustment to commission-established rates.** Beginning 24 months after the commission establishes access line rates, the commission shall annually adjust the rates per access line by category for each municipality by an amount equal to one-half the annual change, if any, in the most recent consumer price index (CPI), as determined by the Federal Bureau of Labor Statistics. Such adjustments shall be made in September preceding the calendar year in which the CPI adjusted access line rates are to take effect.
  
- (k) **CTP implementation of commission-established rates.** CTPs shall continue to compensate municipalities at the rates required under the terms of the expired or terminated agreements or ordinances until the CTP implements the commission

established initial and/or updated rates. A CTP not subject to an existing franchise agreement or ordinance that wants to construct facilities to offer telecommunications services in the municipality shall pay fees that are competitively neutral and non-discriminatory, consistent with the charges of the most recent agreement or ordinance between the municipality and the CTP serving the largest number of access lines within the municipality until the right-of-way fees established by the commission take effect.

- (1) **Development of billing systems.** No later June 1, 2000, CTPs shall complete the development of billing systems necessary to implement access line rates, by category, as established by the commission.
- (2) **Initial quarterly compensation and reporting.**
  - (A) **Implementation.** CTPs may apply the commission-established initial and updated rates (as applicable) to access lines in a municipality for the second calendar quarter of 2000 (the months of April, May and June).
  - (B) **Quarterly access line count report.** No later than August 15, 2000, CTPs that implemented commission-established rates pursuant to subparagraph (A) of this paragraph shall file the first quarterly access line count report with the commission. The report shall include a count of the number of access lines, by category, by municipality, at the end of each month of the preceding quarter (April, May and June) that the CTP implemented commission-established rates. The quarterly report shall exclude lines that are leased or resold to other CTPs unless an intercarrier agreement has been reached pursuant to subsection (l) of this section. The CTP shall

include with the report a certified statement from an authorized officer or duly authorized representative of the CTP certifying that the information contained in the report is true and correct to the best of the officer's or representative's knowledge and belief after inquiry. On request and subject to the confidentiality protections of the Local Government Code, §283.005, each CTP shall provide each affected municipality with a copy of the report required by this subsection.

(C) Compensation. No later than August 15, 2000, CTPs that applied commission established rates pursuant to subparagraph (A) of this paragraph shall pay municipalities, compensation for the preceding quarter at that rate. The municipal compensation shall be the amount equal to the rate per category of access line multiplied by the monthly access line count reported pursuant to subparagraph (B) of this paragraph.

(D) True-up. Where a municipality is compensated under the terms of an expired franchise contract, agreement or ordinance for the period between March 1, 2000 and June 30, 2000, no true-up to the commission established rates will be allowed for that period.

(3) **Subsequent quarterly compensation and reporting.** All CTPs shall implement commission-established initial and updated rates (as applicable) no later than July 1, 2000, and revised rates (as applicable) for the subsequent quarters.

(A) Quarterly access line count report. No later than November 15, 2000, a CTP shall file a quarterly access line count report for the preceding

calendar quarter with the commission. All subsequent quarterly access line count reports shall be due no later than 45 days from the end of the preceding calendar quarter. The quarterly access line count report shall include a count of the number of access lines, by category, by municipality, for the end of each month of the preceding quarter. The report shall exclude lines that are resold or leased to other CTPs unless an intercarrier agreement has been reached pursuant to subsection (l) of this section. The CTP shall include with the report a certified statement from an authorized officer or duly authorized representative of the CTP certifying that the information contained in the report is true and correct to the best of the officer's or representative's knowledge and belief after inquiry. On request and subject to the confidentiality protections of the Local Government Code, §283.005, each CTP shall provide each affected municipality with a copy of the report required by this subsection.

- (B) Compensation. Beginning July 1, 2000, CTPs shall apply the most recent commission-established rates to access line in a municipality. The municipal compensation shall be an amount equal to the rate per category of access line multiplied by the number of access lines in that category in that municipality at the end of each month in a calendar quarter as reflected in reports filed pursuant to subparagraph (A) of this paragraph. All CTPs shall pay to municipalities the compensation for the third calendar quarter of 2000, no later than November 15, 2000. All payments

for subsequent calendar quarters shall be made no later than 45 days from the end of that quarter.

- (4) **Waiver of reporting requirements.** A CTP that has reached an intercarrier agreement pursuant to subsection (l) of this section shall be relieved of the quarterly access line count reporting requirements until the expiration of that agreement.
- (l) **Reporting and compensation on behalf of another CTP.** Notwithstanding any other subsection, a CTP may report and compensate a municipality on behalf of another CTP subject to the following terms.
- (1) All CTPs are responsible for reporting to the commission their own quarterly access line count report and compensating each municipality pursuant to subsection (k) of this section.
- (2) CTPs that own facilities in the rights-of-way of municipalities shall directly compensate each municipality quarterly, based upon a monthly access line count. The compensation shall be the amount equal to the rate per category of access line multiplied by the number of access lines in that category in that municipality, at the end of each month, for the preceding quarter.
- (3) CTPs that do not own facilities in the rights-of-way of municipalities have the option of compensating the municipality through the underlying CTP, so long as the reselling CTP and the underlying CTP have reached a written agreement.

- (4) An underlying CTP and a reselling CTP may reach an agreement that the underlying CTP shall file the quarterly access line count report in each municipality, by category, on behalf of the reselling CTP, and also compensate the municipality for those lines. The quarterly access line count report may be filed with the commission on an aggregated basis.
- (5) A CTP may file access line counts in each municipality for itself and its affiliates that are CTPs on an aggregated basis.
- (6) A CTP that reports on behalf of another CTP shall, on request from the commission or a municipality, provide a disaggregated line count for each CTP included in the report filed pursuant to subsection (k) of this section.
- (7) No later than 45 days after entering into an agreement to provide joint access line counts and municipal compensation pursuant to paragraphs (4) and (5) of this subsection, a CTP that reports and compensates municipalities on behalf of another CTP shall identify in a report filed with the commission, the CTPs on whose behalf access line counts will be reported to the commission.
- (8) Nothing in this section shall prevent a CTP from charging to another CTP a reasonable administrative fee for reporting and compensating a municipality on behalf of another CTP to which it has resold, leased, or otherwise provided access lines.
- (9) Nothing in this section shifts the liability from a reselling CTP for non-payment of municipal compensation and failure to report pursuant to this section.



- (m) **Pass-through.** A CTP recovering its municipal compensation from its customers within the boundaries of a municipality shall not recover a total amount greater than the sum of the amounts derived from the multiplication of access line rates by the number of lines, per category, for that municipality. Pass-through of the commission's rates established under this chapter shall be considered to be a pro rata charge to customers.
- (1) Where a CTP chooses to pass through the municipal fee to its customers such CTP shall not pass through any costs associated with its administration of municipal fees. The pass-through amount shall not exceed the access line rate, by category, established by the commission for that municipality.
  - (2) A CTP shall be allowed to deduct from its current payment any amounts that are direct write-offs as a result of its collection efforts. Any amounts subsequently recovered from the customer after the direct write-offs shall be included in the amounts payable to the cities in the month(s) received. There shall be no reduction in payment for any estimated uncollectible allowances reported for financial purposes by the CTP.
  - (3) Beginning January 1, 2001, on request from the commission, a CTP shall report the amounts collected in municipal fees from customers and the municipal fees paid to municipalities for a period determined by the commission. This report shall be filed with the commission by the CTP no later than 60 days from the date the CTP receives this request.

(n) **Compensation from customers of lifeline or other low-income assistance programs.**

A municipality may choose to forgo municipal compensation from access lines serving Lifeline customers or customers of other similar low-income assistance programs. A municipality electing this option shall notify all CTPs in the municipality of this decision before September 1 on any given year. Upon receipt of such notification, CTPs shall exclude such end-use customers from their quarterly access line count, not pass through a municipal fee to such end-use customers for the next calendar year, and shall be relieved of any obligation to pay fees on such access lines to the municipality.

This agency hereby certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §26.467 relating to Rates, Allocation, Compensation, Adjustments and Reporting is hereby adopted with no changes to the text as proposed.

**ISSUED IN AUSTIN, TEXAS ON THE 25th DAY OF JULY 2000.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**Chairman Pat Wood, III**

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**Commissioner Judy Walsh**

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**Commissioner Brett A. Perlman**