

PUC DOCKET NO. 20935

**IMPLEMENTATION OF
HOUSE BILL 1777**

§
§
§
§

**PUBLIC UTILITY COMMISSION
OF TEXAS**

ORDER

I. Introduction

Under § 283.055(b), Local Government Code, by March 1, 2000, the Commission is required to establish: (1) for each municipality, rates per access line by category; and (2) the statewide average of those rates per access line by category for each certificated telecommunications provider (CTP). Pursuant to § 283.055(a), Local Government Code, not later than November 1, 1999, the Commission is required to establish not more than three categories of access lines for statewide use. The three categories of access line—residential, non-residential, and point-to-point—have been established by P.U.C. SUBST. R. 26.461, which was adopted by the Commission on October 21, 1999. When applied to the total number of access lines by category in the municipality, the Commission’s rates shall be equal to the base amount, consistent with § 283.055(c), Local Government Code. The specific formula for rate determination is reflected in P.U.C. SUBST. R. 26.467(c). The Commission-established rates are maximum rates, pursuant to P.U.C. SUBST. R. 26.467(g)(1)(3).

In an effort to accommodate the desires of municipalities and certificated telecommunications providers (CTPs) for an opportunity to review and possibly amend filings made with the Commission, P.U.C. SUBST. R. 26.467(g) allows an update period. Specifically, P.U.C. SUBST. R. 26.467(g)(1) allows municipalities to update their base amounts and/or allocations, by filing with the Commission no later than March 31, 2000. Moreover, a municipality may choose lower access line rates than the maximum rates initially established under P.U.C. SUBST. R. 26.467(f), by notifying the Commission no later than March 31, 2000. In addition, under P.U.C. SUBST. R. 26.467(g)(2), no later than March 15, 2000, a CTP may request

to update its access line count filed with the Commission pursuant to P.U.C. SUBST. R. 26.465. Section 26.467(g) requires the Commission to establish updated rates for each category of access line in a requesting municipality no later than April 14, 2000.

Pursuant to § 283.055(d) of the Local Government Code and P.U.C. SUBST. R. 26.467(i), the Commission shall implement a municipality's allocation unless, on complaint by an affected CTP, the Commission determines that the allocation is not just and reasonable, is not competitively neutral, or is discriminatory. Under P.U.C. SUBST. R. 26.467(i), any affected CTP may complain regarding a municipality's initial allocation no later than March 15, 2000; complaints regarding a municipality's revised allocation must be filed no later than April 7, 2000.

On March 15, 2000, four affected CTPs filed complaints regarding municipal initial allocation. Two of the affected CTPs also raised concerns regarding municipal base amounts. Numerous municipalities revised their initial allocation and/or base amounts in response to the complaints. On April 7, 2000, two affected CTPs, Southwestern Bell Telephone Company (SWBT) and GTE Southwest, Incorporated (GTESW) filed complaints regarding municipal updated allocation. Municipalities whose base amounts and/or allocations were contested by SWBT and/or GTESW were ordered to provide affidavits and supporting documentation no later than April 17, 2000.

The Commission orders that:

- (1) The fee per access line maximum rates established using either a municipality's base amount or statewide average by CTP, including updated municipal base amount information, shall be assessed as reflected on Attachment A, for the listed municipalities;
- (2) The fee per access line rates for municipalities that have:
 - (a) chosen lower than maximum rates, pursuant to P.U.C. SUBST. R. 26.467(g)(3); and/or
 - (b) chosen to forgo municipal compensation from access lines serving Lifeline customers or customers of other similar low-income assistance programs;shall be assessed as reflected on Attachment A, for the listed municipalities;

- (3) The statewide average rates for CTPs, as determined by the Commission on March 1, 2000, are adopted, as reflected on Attachment B, for the listed CTPs;
- (4) CTPs shall use approved tariff language and customer notification language, as reflected on Attachment C and consistent with the schedule set forth in this Order;
- (5) Municipalities that did not provide base amount filings to the Commission are not eligible to receive franchise compensation unless and until they file base amount information with the Commission, no later than September 1 of each year, at which time the Commission shall develop municipality-specific rates;
- (6) Municipalities for which rates cannot be developed due to unresolved municipal boundary issues, as shown on Attachment D, may, upon resolution of such issues, file revised information no later than September 1 of each year, at which time the Commission shall develop municipality-specific rates; and
- (7) Municipalities served by CTPs that paid no franchise compensation in 1998 to any of the municipalities served, as shown on Attachment E, are ineligible to receive franchise compensation under Chapter 283, Local Government Code.

II. Purpose of HB 1777

According to § 283.001(c), Local Government Code, the purpose of Chapter 283 is to establish a uniform method for compensating municipalities for the use of a public right-of-way by CTPs that: (1) is administratively simple for municipalities and CTPs; (2) is consistent with state and federal law; (3) is competitively neutral; (4) is nondiscriminatory; (5) is consistent with the burdens on municipalities created by the incursion of CTPs into a public right-of-way; and (6) provides fair and reasonable compensation for the use of a public right-of-way.

Section 283.051(a), Local Government Code, provides that a CTP that provides telecommunications services within a municipality is required to pay, as compensation to a municipality for use of the public rights-of-way in the municipality, only the amount determined by the Commission pursuant to § 283.055, Local Government Code.

III. Calculation of Rates Based on Municipal Filings

A. Base Amount

The amount of a municipality's right-of-way fee is determined using the municipality's base amount. Section 283.053(b), Local Government Code, states that the base amount for a municipality is "the total amount of revenue received by the municipality in franchise, license, permit, and application fees and in-kind services or facilities from certificated telecommunications providers in 1998 within the boundaries of the municipality, including all newly annexed areas." Under § 283.053(a), Local Government Code, pole rental fees, special assessments, and taxes of any kind, including ad valorem or sales and use taxes, or other compensation not related to the use of a public right-of-way are specifically excluded from the base amount determination. P.U.C. SUBST. R. 26.463(d), clarifies that payments received inside or outside of calendar year 1998 can be included as revenue received only to the extent that those payments represent compensation for calendar year 1998 usage of a public right-of-way. Pursuant to P.U.C. SUBST. R. 26.463(i)(2)(A), municipalities shall file their base amount figures no later than December 1, 1999.

Section § 283.053(b), Local Government Code, provides that in-kind services or facilities received in 1998 specifically prescribed in applicable agreements or ordinances effective or adopted January 12, 1999, are also included in the base amount. Under § 283.053(f), Local Government Code, in-kind services or facilities provided to municipalities under existing franchise agreements or ordinances by CTPs shall be valued at one percent (1%) of the total 1998 revenue from franchise, permit, license, and application fees paid to the municipality, unless a municipality can establish that those services or facilities received by the municipality had a greater value in 1998.

In order to establish that the total value of in-kind compensation received from CTPs in 1998 had a greater value than one percent (1%) of the municipality's base amount, the municipality must make a showing consistent with P.U.C. SUBST. R. 26.463(e). Under P.U.C. SUBST. R. 26.463(e), specific valuation methods are provided for (1) telecommunications

equipment; (2) dark fiber; (3) poles, ducts and conduits; (4) telecommunications service; and (5) all other facilities and services. Generally, facilities are valued only to the extent the municipality utilized them during calendar year 1998. As to services, in-kind compensation is limited to services received in calendar year 1998.

Besides revenue received and in-kind compensation, if any, the base amount shall include the municipal fee rate escalation provisions specifically prescribed in applicable agreements or ordinances effective or adopted by January 12, 1999, pursuant to § 283.053(b), Local Government Code. Under § 283.053(b), Local Government Code, additional compensation attributable to municipal fee rate escalation provisions may not become part of the base amount before it becomes effective under the existing franchise agreement or ordinance. The inclusion in the base amount of additional compensation attributable to fee rate escalation is limited to the amounts received in calendar year 1999 and in the first two months of 2000. Under P.U.C. SUBST. R. 26.463(d)(2), the municipality shall calculate and report its fee rate escalation amount that is known and measurable for calendar year 1999, as specifically prescribed in effective agreements or ordinances, and add that escalation amount to the base amount calculation. In addition, pursuant to P.U.C. SUBST. R. 26.467(g)(1)(A)(iv), municipalities may demonstrate eligibility under their existing franchise agreement or ordinance to receive a known and measurable amount due to specifically prescribed fee rate escalation provisions for the period between January 1, 2000 and March 1, 2000. The known and measurable amount is dependent upon the specific terms of the existing franchise agreement or ordinance.

Section 283.053(c), Local Government Code allows a municipality (1) located in a county with a population of less than 25,000; or (2) that did not have an effective franchise agreement or ordinance on January 12, 1999; or (3) was not in existence on January 12, 1999, to choose between several options in developing its base amount. Such municipalities can choose to follow the general approach outlined in this section of this Order, by providing the total amount of revenue received from CTPs in 1998. To address the situation in which a municipality may not have received any revenue in 1998, Section 283.053(c), Local Government Code, allows such a municipality to develop a base amount using the statewide average fee per line, by category, of the CTP with the greatest number of access lines in that municipality,

multiplied by the total number of access lines in each category located within the municipal boundaries on December 31, 1998. Alternatively, such a municipality may choose to adopt the base amount of a similarly sized municipality. The adopting municipality and the similarly sized municipality, however, must be in the same or an adjacent county, and the CTP with the greatest number of lines must be the same for each municipality.

Similarly, cities involved in municipal franchise fee litigation are given a specific method for developing a base amount. Under Section 283.053(d), Local Government Code, this option applies only to a municipality that was involved in such litigation with one or more CTPs during any part of 1998. Such a municipality is required first to repeal any ordinance subject to dispute in litigation, no later than December 1, 1999. In addition, cities involved in municipal franchise fee litigation must voluntarily dismiss with prejudice any claims in the litigation for compensation and waive any potential claim for compensation under any franchise agreement or ordinance expired or in existence on September 1, 1999. Upon taking these actions, such a municipality is allowed to choose to establish its base amount using either: (1) the statewide average access line rate for the CTP with the greatest number of access lines in that municipality multiplied by the total number of access lines located within the boundaries of the municipality on December 31, 1998; or (2) an amount not to exceed 21% of the total sales and use tax revenue received by the municipality pursuant to Chapter 321, Tax Code, excluding certain specific sales and use taxes.

B. Allocation

Under § 283.055(d), Local Government Code, by December 1, 1999, a municipality that wishes to request a specific allocation of the base amount over specific access line categories subject to rates must notify the Commission of the desired allocation. As part of the base amount filings, municipalities must include their requested allocation. Under § 283.055(d), Local Government Code, the Commission shall establish an allocation of the base amount over the categories of access lines if a municipality does not file its proposed allocation by December 1, 1999. In P.U.C. SUBST. R. 26.467(e), the Commission developed a default allocation of

1:2.3:3.5. This default allocation represents an average of all allocation ratios filed by municipalities.

C. Access Line Counts

The final component of the rate calculation is the access line counts provided by each CTP for each municipality in which it operates. Section 283.005, Local Government Code, allows the Commission to collect and compile any information from CTPs and municipalities as is necessary to implement Chapter 283 of the Local Government Code (HB 1777). By January 24, 2000, pursuant to P.U.C. SUBST. R. 26.465(g)(2)(A)(i), all CTPs were required to file an access line count for December 31, 1998. If a CTP could not file a 1998 access line count, it could request a good cause exception and file the line count available for December, 1999. Under P.U.C. SUBST. R. 26.467(d), when a CTP does not provide an actual 1998 access line count, the Commission shall use the CTP's 1999 access line count to derive an estimated 1998 access line count, using estimated statewide growth rate figures.

D. Formula

The attached rates are adopted in accordance with the requirements of HB 1777, and in this Order, using the formula adopted in P.U.C. SUBST. R. 26.467(c), as follows:

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 =	$(L1*R1) + (L2*R2) + (L3*R3)$

IV. Calculation of Statewide Average Rates for each CTP

As part of the Commission's determination of fees under § 283.055, Local Government Code, the Commission must also develop the statewide average of municipalities' rates per access line by category, for each CTP. The statewide average is used to develop base amounts for eligible municipalities. Under § 283.053(c), Local Government Code, eligible municipalities can be one of three types: (1) a municipality located in a county with a population of less than 25,000; (2) a municipality without an effective franchise agreement or ordinance on January 12, 1999; or (3) a municipality not in existence on January 12, 1999. In addition, under § 283.053(d), a municipality involved in litigation relating to franchise fees with one or more CTPs during any part of 1998 is eligible to choose to develop a base amount using the statewide average by CTP or to claim up to 21% of total sales and tax revenue as its base amount.

V. Tariff Filings and Customer Notification

Section 283.051(c), Local Government Code, provides that fees imposed under Chapter 283, Local Government Code, constitute "a municipal fee" or "municipal fees" within the meaning of the Public Utility Regulatory Act¹ (PURA) § § 51.009 and 54.206. Pursuant to PURA § 54.206(a), a CTP has the right to collect a fee that a municipality imposes under §§ 54.204 or 54.205 through a pro rata charge to the customers in the boundaries of the municipality. PURA § 54.206(b) also states that the charge may be shown on the customer's bill as a separate line item. Under P.U.C. SUBST. R. 26.31(b), each utility is required to notify customers affected by a change in rates.

¹ TEX. UTIL. CODE ANN. §§ 11.001 – 64.158 (Vernon 1998 & Supp. 2000).

Standardized tariff language and customer notification language appear in Attachment C to this Order. To the extent that a CTP wishes to deviate from this approved language, it shall request a good cause exception.

VI. Complaints Regarding Allocation and/or Base Amounts

Pursuant to § 283.055(d) of the Local Government Code and P.U.C. SUBST. R. 26.467(i), the Commission shall implement a municipality's allocation unless, on complaint by an affected CTP, the Commission determines that the allocation is not just and reasonable, is not competitively neutral, or is discriminatory. Under P.U.C. SUBST. R. 26.467(i), any affected CTP may complain regarding a municipality's initial allocation no later than March 15, 2000; complaints regarding a municipality's revised allocation must be filed no later than April 7, 2000.

On March 15, 2000, four affected CTPs, SWBT, GTESW, Alenco and Sage, filed complaints regarding municipal initial allocation. Alenco and Sage filed complaints regarding only one municipality; the municipality revised its base amount filing to correct an error, thereby addressing the allocation concerns of Sage and Alenco. The two remaining affected CTPs, SWBT and GTESW, also raised concerns regarding municipal base amounts. Many municipalities revised their initial allocation and/or base amounts in response to the complaints.

On April 7, 2000, pursuant to P.U.C. SUBST. R. 26.467(i)(2), SWBT and GTESW filed complaints regarding updated municipal allocations and raising concerns regarding municipal base amounts. CTPs were directed to provide notice to all municipalities whose allocations they contested. The PUC also notified these cities immediately and requested the cities to provide affidavits with supporting documentation, as appropriate. A significant number of contested base amount issues were resolved.

VII. Municipalities Ineligible for Franchise Compensation

Pursuant to § 283.051(a), Local Government Code, notwithstanding any other law, a CTP that provides telecommunications services within a municipality is required to pay as compensation to a municipality for use of the public rights-of-way within a municipality only the amount determined by the Commission under § 283.055, Local Government Code. Under § 283.055(c), Local Government Code, the rates when applied to the total number of access lines by category in the municipality shall be equal to the base amount. Pursuant to P.U.C. SUBST. R. 26.463(i), all municipalities are required to file their base amount no later than December 1, 1999. P.U.C. SUBST. R. 26.463(l) provides that the base amount for a municipality that fails to complete its base amount report by December 1, 1999 shall be \$0.

Furthermore, for purposes of determining the amount of a municipality's right-of-way fee, § 283.053(b), Local Government Code, provides that the base amount is to reflect the total amount received by the municipality from CTPs in 1998 within the boundaries of the municipality. Once rates are established, § 283.055(c) provides that the rates when applied to the total number of access lines by category in the municipality shall equal the base amount. When municipal boundaries cannot be adequately established, neither a base amount nor a total number of access lines by category can be developed. Accordingly, the Commission cannot set rates for such municipalities. The affected municipalities are listed on Attachment D. Municipalities for which rates cannot be developed due to unresolved municipal boundary issues may, upon resolution of such issues, file revised information no later than September 1 of each year, at which time the Commission shall develop municipality-specific rates.

Finally, municipalities served by CTPs that paid no franchise compensation in 1998 to any of the municipalities served are ineligible to receive franchise compensation under Chapter 283, Local Government Code. Excepting municipalities that were involved in litigation relating to franchise fees during 1998, the municipal base amount under Chapter 283, Local Government Code, can be calculated in three different ways. First, under §§ 283.053(b) and (c)(3), Local Government Code, the base amount is the total amount of revenue received by the municipality from CTPs in 1998. Secondly, pursuant to § 283.053(c)(1), Local Government Code, the base amount for certain eligible municipalities is an amount not greater than the statewide average fee per line for each category of access line of the CTP 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. Lastly, pursuant to § 283.053(c)(1), Local Government Code, the base amount for certain eligible municipalities is an amount not greater than the base amount determined for a similarly sized municipality in the same or an adjacent county in which the CTP with the greatest number of access lines in the municipality is the same for each city. In each option, whether based on actual revenue, on the average fee per line, or on the base amount of a similarly sized municipality, the calculation of base amount requires actual revenue figures. However, where a CTP paid no franchise compensation in 1998 to any of the municipalities it serves, each such municipality is ineligible to receive franchise compensation under Chapter 283, Local Government Code. Each such municipality cannot develop its own base amount, adopt a neighbor's base amount or develop a statewide average fee per line because no compensation was received in 1998 on which to calculate a base amount.

VIII. Findings of Fact

1. Section 283.001(c), Local Government Code, includes a legislative finding that the purpose of Chapter 283, Local Government Code, is to establish a uniform method for compensating municipalities for the use of a public right-of-way by CTPs that: (1) is administratively simple for municipalities and telecommunications providers; (2) is consistent with state and federal law; (3) is competitively neutral; (4) is nondiscriminatory; (5) is consistent with the burdens on municipalities created by the incursion of CTPs into a public right-of-way; and (6) provides fair and reasonable compensation for the use of a public right-of-way.
2. Section 283.051(a), Local Government Code, provides that a CTP that provides telecommunications services within a municipality is required to pay as compensation to a municipality for use of the public rights-of-way in the municipality only the amount determined by the Commission under § 283.055, Local Government Code.
3. Section 283.051(c), Local Government Code, provides that fees imposed under Chapter 283, Local Government Code, constitute "a municipal fee" or "municipal fees" within the

meaning of PURA §§ 51.009 and 54.206. Pursuant to PURA § 54.206(a), a CTP has the right to collect a fee that a municipality imposes under §§ 54.204 or 54.205 through a pro rata charge to the customers in the boundaries of the municipality. PURA § 54.206(b) also states that the charge may be shown on the customer's bill as a separate line item. Under P.U.C. SUBST. R. 26.31(b), each utility is required to notify customers affected by a change in rates.

4. Section 283.055(b), Local Government Code, requires that, by March 1, 2000, the Commission must establish: (1) for each municipality, rates per access line by category; and (2) the statewide average of those rates per access line by category. Section 283.055(a), Local Government Code, requires that, not later than November 1, 1999, the Commission must establish not more than three categories of access lines for statewide use. The three categories of access line—residential, non-residential, and point-to-point—are established in P.U.C. SUBST. R. 26.461. Consistent with § 283.055(c), Local Government Code, when applied to the total number of access lines by category in the municipality, the Commission's rates for these categories of access lines shall equal the base amount.
5. Section 283.053, Local Government Code, states that the base amount for a municipality is the total amount of revenue received by the municipality in franchise, license, permit, and application fees and in-kind services or facilities from CTPs in 1998 within the boundaries of the municipality, including all newly annexed areas. P.U.C. SUBST. R. 26.463(d) clarifies that payments received inside or outside of calendar year 1998 can be included as revenue received only to the extent that these payments represent compensation for calendar year 1998 usage of a public right-of-way. P.U.C. SUBST. R. 26.463(i)(2)(A) requires municipalities to file their base amount figures no later than December 1, 1999.
6. Section 283.055(d), Local Government Code, requires that, by December 1, 1999, a municipality that wishes to specify an allocation of the base amount over specific access line categories subject to rates must notify the Commission of the desired allocation. Municipalities included their requested allocation as part of the base amount filings. Section 283.055(d), Local Government Code, requires the Commission to establish an

allocation of the base amount over the categories of access lines if a municipality did not file its proposed allocation by December 1, 1999. Consequently, the Commission developed a default allocation of 1:2.3:3.5 in P.U.C. SUBST. R. 26.467(e). This default allocation represents an average of all allocation ratios filed by municipalities.

7. Section 283.005, Local Government Code, allows the Commission to collect and compile any information from CTPs and municipalities as is necessary to implement Chapter 283 of the Local Government Code. P.U.C. SUBST. R. 26.465(g)(2)(A)(i) requires all CTPs to file an access line count for December 31, 1998, by January 24, 2000. If a CTP cannot file a 1998 access line count, it can request a good cause exception and file the line count available for December, 1999. Under P.U.C. SUBST. R. 26.467(d), in a situation in which a CTP does not provide an actual 1998 access line count, the Commission shall use the CTP’s 1999 access line count to derive an estimated 1998 access line count, using estimated statewide growth rate figures.

8. P.U.C. SUBST. R. 26.467(c) sets out the formula the Commission shall use to develop access line rates, by category, as follows:

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 =	$(A2*B)/L2$

$R3 = (A3*B)/L3$
$B = (L1*R1) + (L2*R2) + (L3*R3)$

9. As part of its determination of fees under § 283.055, Local Government Code, the Commission must also develop the statewide average of municipalities' rates per access line by category, for each CTP. Section 283.053(c), Local Government Code, allows the statewide average to be used to develop base amounts for eligible municipalities such as: (1) a municipality located in a county with a population of less than 25,000; (2) a municipality without an effective franchise agreement or ordinance on January 12, 1999; or (3) a municipality not in existence on January 12, 1999. Section 283.053(d), Local Government Code, allows a municipality to choose between developing a base amount using the statewide average or claiming up to 21% of total sales and tax revenue as its base amount if it was involved in litigation relating to franchise fees with one or more CTPs during any part of 1998 and, not later than December 1, 1999, repealed any ordinance subject to dispute in the litigation, voluntarily dismissed with prejudice any claims in litigation for compensation, and agreed to waive any potential claim for compensation under any franchise agreement or ordinance expired or in existence on September 1, 1999.
10. The statewide average fee per access line by category for each CTP shall be developed only one time, based on all actual base amounts filed by municipalities. Although P.U.C. SUBST. R. 26.467(g) allows updates to municipal filings between March 1 and April 1, 2000, the Commission will not update the statewide average. On March 1, 2000, the Commission approved the statewide average fee per access line by category for each CTP.
11. P.U.C. SUBST. R. 26.467(g) allows an update period for both municipalities and CTPs. Specifically, P.U.C. SUBST. R. 26.467(g)(1) allows municipalities to update their base amounts and/or allocations, by filing with the Commission no later than March 31, 2000. Moreover, a municipality may choose lower access line rates than the maximum rates initially established under P.U.C. SUBST. R. 26.467(f), by notifying the Commission no later than March 31, 2000. In addition, under P.U.C. SUBST. R. 26.467(g)(2), no later than March

15, 2000, a CTP may request to update its access line count filed with the Commission pursuant to P.U.C. SUBST. R. 26.465. P.U.C. SUBST. R. 26.467(g) requires the Commission to establish updated rates for each category of access line in a requesting municipality no later than April 14, 2000. The Commission issued an interim order approving rates on April 12, 2000 for all affected municipalities except those municipalities for which such rates remained in question.

12. Pursuant to § 283.055(d) of the Local Government Code and P.U.C. SUBST. R. 26.467(i), the Commission shall implement a municipality's allocation unless, on complaint by an affected CTP, the Commission determines that the allocation is not just and reasonable, is not competitively neutral, or is discriminatory. Under P.U.C. SUBST. R. 26.467(i), any affected CTP may complain regarding a municipality's initial allocation no later than March 15, 2000; complaints regarding a municipality's revised allocation must be filed no later than April 7, 2000.
13. Pursuant to § 283.051(a), Local Government Code, notwithstanding any other law, a CTP that provides telecommunications services within a municipality is required to pay as compensation to a municipality for use of the public rights-of-way within a municipality only the amount determined by the Commission under § 283.055, Local Government Code. Under § 283.055(c), Local Government Code, the rates when applied to the total number of access lines by category in the municipality shall be equal to the base amount. Pursuant to P.U.C. SUBST. R. 26.463(i), all municipalities are required to file their base amounts no later than December 1, 1999. P.U.C. SUBST. R. 26.463(l) provides that the base amount for a municipality that fails to complete its base amount report by December 1, 1999 shall be \$0.
14. For purposes of determining the amount of a municipality's right-of-way fee, § 283.053(b), Local Government Code, provides that the base amount is to reflect the total amount received by the municipality from CTPs in 1998 within the boundaries of the municipality. Section 283.055(c), Local Government Code, provides that the rates when applied to the total number of access lines by category in the municipality shall equal the base amount. When

municipal boundaries cannot be adequately established, neither a base amount nor a total number of access lines by category can be developed. Accordingly, the Commission cannot set rates for such municipalities. Municipalities for which rates cannot be developed due to unresolved municipal boundary issues may, upon resolution of such issues, file revised information no later than September 1 of each year, at which time the Commission shall develop municipality-specific rates.

15. Municipalities served by CTPs that paid no franchise compensation in 1998 to any of the municipalities served are ineligible to receive franchise compensation under Chapter 283, Local Government Code. Excepting municipalities that were involved in litigation relating to franchise fees during 1998, Chapter 283, Local Government Code, provides three ways for calculating base amount. Under §§ 283.053(b) and (c)(3), Local Government Code, the base amount is the total amount of revenue received by the municipality from CTPs in 1998. Pursuant to § 283.053(c)(1), Local Government Code, the base amount for certain eligible municipalities is an amount not greater than the statewide average fee per line for each category of access line of the CTP 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. Pursuant to § 283.053(c)(1), Local Government Code, the base amount for certain eligible municipalities is an amount not greater than the base amount determined for a similarly sized municipality in the same or an adjacent county in which the CTP with the greatest number of access lines in the municipality is the same for each city. In each option, the calculation of base amount requires actual revenue figures. Therefore, where a CTP paid no franchise compensation in 1998 to any of the municipalities it serves, each such municipality is ineligible to receive franchise compensation under Chapter 283, Local Government Code.

IX. Conclusions of Law

1. The Commission has jurisdiction of this matter under §§ 283.005, 283.055, and 283.058, Local Government Code, and under §§ 14.001, 14.002, 14.003, 52.002 of the Public Utility

Regulatory Act (PURA), codified at TEX. UTIL. CODE ANN. § § 11.001 – 64.158 (Vernon 1998 & Supp. 2000).

2. The fee per access line rates established by the Commission, when applied to the total number of access lines by category in each municipality, equal that municipality's base amount.
3. The fee per access line rates and the statewide average of those rates by category for each CTP, as established by the Commission, are consistent with, and meet the requirements of, Chapter 283, Local Government Code, and the Commission's rules.
4. The municipal allocations of the base amount over the specific access line categories subject to rates are just and reasonable, competitively neutral and non-discriminatory.
5. Municipalities that did not provide base amount filings to the Commission are not eligible to receive franchise compensation unless and until they file base amount information with the Commission, no later than September 1 of each year, at which time the Commission shall develop municipality-specific rates.
6. Municipalities for which rates cannot be developed due to unresolved municipal boundary issues may, upon resolution of such issues, file revised information no later than September 1 of each year, at which time the Commission shall develop municipality-specific rates.
7. Municipalities served by CTPs that paid no franchise compensation in 1998 to any of the municipalities served are ineligible to receive franchise compensation under Chapter 283, Local Government Code.

X. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission orders:

1. CTPs shall pay to municipalities the approved rates, according to Attachment A, consistent with Chapter 283, Local Government Code and Commission rules.
2. Consistent with P.U.C. SUBST. R. 26.431(b), each utility shall notify customers affected by a change in rates. CTPs shall use tariff language and customer notification wording in accordance with Attachment C. To the extent that a CTP wishes to deviate from this approved language, it shall request a good cause exception. The CTP shall indicate in bold print in the cover letter to its compliance filing if it has chosen to deviate from the PUC approved language.
3. CTPs shall file all tariffs and customer notification language necessary to comply with this Order by May 5, 2000 in Project No. 22382. Staff shall issue recommendations on tariff and customer notification filings no later than May 12, 2000. The following timeline shall apply to these compliance filings:

May 5, 2000	CTPs file revised tariffs and customer notification language
May 12, 2000	Staff issues recommendations on tariff and customer notification language
May 18, 2000	Office of Policy Development issues final approval
May 22, 2000	Effective date of tariffs and customer notification

4. CTPs shall implement the rates approved in this Order in accordance with Chapter 283, Local Government Code and Commission rules by June 1, 2000, but in no event later than July 1, 2000.

SIGNED AT AUSTIN, TEXAS the _____ day of April, 2000.

PUBLIC UTILITY COMMISSION OF TEXAS

PAT WOOD, III, CHAIRMAN

JUDY WALSH, COMMISSIONER

BRETT A. PERLMAN, COMMISSIONER