

PROJECT NO. 23956

ACCESS LINE RATES FOR TEXAS	§	PUBLIC UTILITY COMMISSION
CITIES PURSUANT TO LINE COUNT	§	
ERRORS FROM CERTIFICATED	§	OF TEXAS
TELECOMMUNICATIONS	§	
PROVIDERS	§	

ORDER

I. Introduction

Under § 283.055(b), Local Government Code, the Public Utility Commission (Commission) is required to establish: (1) rates per access line by category for each municipality; and (2) the statewide average of those rates per access line by category for each certificated telecommunications provider (CTP). Both of these requirements were met when the Commission adopted municipal rates and CTP statewide averages¹. CTPs were required to implement the Commission-established final rates no later than June 1, 2000.

In January of 2001, Verizon Southwest (Verizon) voluntarily disclosed to the Commission that the initial line counts, submitted previously under the name of GTE Corporation, were erroneous and filed an amended access line count with the Commission. Subsequently, Commission staff contacted every CTP in Texas that reported access lines for 1998 or 1999 to give them an opportunity to revise their initial access line count.

As a result of these efforts, an additional 11 CTPs have made revisions to their initial access line count. These 11 CTPs, in addition to Verizon, are DMJ Communications, Inc.; e.spire Communications, Inc.; Allegiance Telecom of Texas, Inc.; Choctaw Communications, Inc.; Time Warner Telecom of Texas, LP (on behalf of GST Telecom Texas, Inc.); Level 3 Communications, LLC; Texas AllTel, Inc.; Trinity Valley

¹ *Implementation of House Bill 1777, Order (May 3, 2000).*

Services, Inc.; TXU Communications; Valence Communications Service, Ltd.; and Winstar Wireless, Inc. In the January 2001 filing Verizon (without reference to a specific statutory provision) requested authorization from the Commission to surcharge customers for under-collected franchise fees.

The Commission concludes that:

- (1) The corrected fee per access line maximum rates for cities affected by adjustments to the initial line count shall be as shown on Exhibit A for the listed municipalities;
- (2) The fee per access line maximum rates for cities where the line count errors were *de minimis*, e.g. did not alter the fee-per-line rate, shall be shown on Exhibit B for the listed municipalities; and
- (3) All other fee per access line maximum rates, as adopted on May 3, 2000, shall remain in effect, as approved.

II. Background

Under § 283.001(c), Local Government Code, 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 certificated telecommunications providers 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 certificated telecommunications providers into a public right-of-way; and (6) provides fair and reasonable compensation for the use of a public right-of-way.

Pursuant to § 283.055(a), Local Government Code, 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).

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.

A major component of the rate calculation is the access line counts provided by each CTP for each municipality in which they operate. 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 as of December 31, 1998. If a CTP could not file a 1998 access line count, that CTP could request a good cause exception and file the most recent line count available for December, 1999. Under P.U.C. SUBST. R. 26.467(d), where 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.

The 12 CTPs that have reported corrected line counts have been allowed to submit these corrected line counts in order to ensure that the corrected fee per access line rates, when applied to the access line counts, result in the municipal base amount, consistent with § 283.055(c), Local Government Code.

III. 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 certificated telecommunications providers 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.
4. Section 283.055(b), Local Government Code, requires that 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. 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 shall be equal to the base amount.
5. Section 283.055(d), Local Government Code, requires that a municipality that wants to effect an allocation of the base amount over specific access line categories to be assessed rates must notify the Commission of the desired allocation. Municipalities included their requested allocation as part of the original 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. 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.

6. The Commission finds that allocations resulting in rates of more than \$2 for Category 1, more than \$4 for Category 2, or more than \$10 for Category 3 appear high. Municipalities are urged, but not required, to consider allocation formulas resulting in rates below these levels.
7. P.U.C. SUBST. R. 26.465(g)(2)(A)(i) required all CTPs to file an access line count as of December 31, 1998, no later than January 24, 2000. If a CTP could not file a 1998 access line count, that CTP could request a good cause exception and file the most recent line count available for December, 1999. Under P.U.C. SUBST. R. 26.467(d), where 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 the Commission's determination of fees under § 283.055, Local Government Code, the Commission was also required to develop the statewide average of municipalities' rates per access line by category, for each CTP.
10. The access line counts originally submitted by Verizon; DMJ Communications, Inc.; e.spire Communications, Inc.; Allegiance Telecom of Texas, Inc.; Choctaw Communications, Inc.; Time Warner Telecom of Texas, LP (on behalf of GST Telecom Texas, Inc.); Level 3 Communications, LLC; Texas AllTel, Inc.; Trinity Valley Services, Inc.; TXU Communications; Valence Communications Service, Ltd.; and Winstar Wireless, Inc. have been determined to be erroneous. An accurate access line count is essential to ensure that the rates, when applied to the total number of access lines, equal the base amount, pursuant to § 283.055(c), Local Government Code.
11. Because corrections were made to original access line counts used to calculate fee per access line rates, it is necessary to re-calculate the fee per access line rates for cities whose rates were affected by corrected access line counts. For cities whose rates were not affected, or where the effects on rates were *de minimis*, no rate re-calculation is warranted.
12. Issues related to past due compensation that may result from erroneous line counts shall be worked out between municipalities and CTPs.

13. On April 6, 2001, the Commission determined that Chapter 283, Local Government Code does not authorize implementation of surcharges with respect to newly incorporated or newly participating cities in the initial establishment of rates.²

IV. 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 revised fee per access line maximum rates established by the Commission, when applied to the total number of access lines by category in each affected municipality, are equal to that municipality's base amount.
3. The revised fee per access line maximum rates, as established by the Commission and shown in Exhibit A, are consistent with, and meet the requirements of Chapter 283, Local Government Code, and the Commission's rules.
4. Consistent with Finding of Fact 13, the Commission finds that no surcharges or refunds relating to past-due compensation can be allowed in this proceeding.

V. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following Orders:

1. The revised fee per access line maximum rates for cities affected by adjustments to the initial line count shall be as shown on Exhibit A for the listed municipalities;

² See, Project No. 23379 - *Issues Relating to Access Line Reporting and Compensation Pursuant to Substantive Rules 26.465 and 26.467*, Open Meeting Transcript at 45.

2. The fee per access line maximum rates for municipalities where the line count errors were *de minimis*, e.g. did not alter the fee-per-line rate, shall be as shown on Exhibit B for the listed municipalities;
3. Maximum rates for all other municipalities not reflected in either Exhibit A or B shall remain as approved by this Commission in its Order of May 3, 2000 in Docket Number 20935.³
4. To the extent that any municipality affected by a change in access line rates chooses to request rates other than those approved by the Commission, the Commission delegates to staff administrative authority to approve revised rates that meet one or both of the following two criteria:
 - a) The revised rates are equal to or less than the Commission-approved maximum access line rates as reflected in Exhibit A to this Order; or
 - b) The rates requested by a city reflect an allocation ratio similar to the current allocation for that city.
5. CTPs shall not impose surcharges or issue refunds relating to past-due compensation.
6. All other relief requested, unless granted herein, is denied.

³ *Implementation of House Bill 1777, Order (May 3, 2000).*

SIGNED AT AUSTIN, TEXAS the _____ day of May, 2001.

PUBLIC UTILITY COMMISSION OF TEXAS

PAT WOOD, III, CHAIRMAN

BRETT A. PERLMAN, COMMISSIONER