

PROJECT NO. 23956

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

**ORDER APPROVING CITY-PREFERRED RATES FOR CITIES AFFECTED BY
ERRONEOUS INITIAL LINE COUNTS FROM SPRINT COMMUNICATIONS
COMPANY d/b/a UNITED TELEPHONE COMPANY AND CENTRAL
TELEPHONE COMPANY**

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.

Upon notice from two municipalities regarding unusual changes in Sprint Communications Company d/b/a United Telephone Company and Central Telephone Company's (Sprint) quarterly access line counts, Commission Staff contacted Sprint on September 26, 2002 to obtain an explanation from Sprint about line count errors reported by the City of Athens and City of Killeen. On November 4, 2002, Sprint acknowledged that its initial access line counts for its two ILECs, United Telephone Company (CCN #40039) and Central Telephone Company (CCN #40096), were erroneous. Sprint revised those initial access line counts for most municipalities first on December 20, 2002, but then revised these corrected line counts again on February 13, 2003. At that point, however, Sprint did not include corrected line counts

¹ *Implementation of HB 1777*, Project No. 20935, Order (May 3, 2000).

for several municipalities (Cities of Kemp, Gun Barrel City, Cuney, Mabank, Seven Points and Tool). On March 10, 2003, Sprint corrected initial access line counts for Kemp and Gun Barrel City. On October 3, 2003, Sprint filed corrected initial access line counts for the remaining municipalities – Cuney, Mabank, Seven Points, and Tool.

II. Background

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. TEX. LOC. GOV'T CODE ANN. § 283.001(c) (Vernon Supp. 2003).

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 lines — 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. 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 did not provide an actual 1998 access line count, the Commission was required to use the CTP's 1999 access line count to derive an estimated 1998 access line count, using estimated statewide growth rate figures.

The Commission allowed Sprint 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.

In previous Orders, the Commission delegated authority to Staff to approve city-preferred rates. However, in this instance only, Staff requested that the Commission approve city-preferred rates after Staff has had the opportunity to notify affected municipalities of their changes in maximum rates, as approved by this Order, and their options in setting city-preferred rates. Staff did not request that the Commission otherwise affect the authority delegated to Staff to approve administratively city-preferred access line rates.²

² *Issues Related to Establishment of, and Annual Revisions to, Access Line Rates for Texas Municipalities*, Project No. 24640, Order Delegating Authority to Staff To Approve Revised Access Line Rates and Lifeline Exemption Status Changes (Oct. 23, 2001) and Order Delegating Authority to Staff to Approve Access Line Rates And Lifeline Exemption Status Changes for Newly Participating Cities (Feb. 7, 2003).

Pursuant to the Order approved at the October 9, 2003 Open Meeting revising maximum access line rates, only one affected municipality, the City of Murchison, indicated its intention to adopt city-preferred rates within its maximum access line rates. However, subsequent to the Commission's approval of the maximum access line rates, Commission Staff discovered a calculation error in those Commission-approved maximum access line rates for the City of New Fairview, and corrects this error herein.

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 the Commission 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. 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 did not provide an actual 1998 access line count, the Commission was required to 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 Sprint were 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. The Commission ordered in the May 8, 2001 Open Meeting that issues related to past due compensation that may result from erroneous line counts shall be worked out between municipalities and CTPs.³
13. The Commission determined during the May 8, 2001 Open Meeting that Chapter 283, Texas Local Government Code, does not authorize CTPs to pass-through to customers any surcharges or refunds relating to compensation past-due to a municipality.⁴
14. Only one municipality, the City of Murchison, indicated its intention to adopt city-preferred rates within its maximum access line rates. The city-preferred rates are attached.
15. The maximum access line rates for the City of New Fairview approved at the October 9, 2003 Open Meeting were incorrect. The corrected rates are attached.

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.

³ Open Meeting Tr. at 214-215 (May 8, 2001).

4. Chapter 283, Local Government Code, does not authorize CTPs to pass-through to customers any surcharges or refunds relating to compensation past-due to a municipality.

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 and city-preferred rates for cities affected by adjustments to the initial line count shall be as shown in Exhibit A for the listed municipalities, effective January 1, 2004.
2. Maximum rates for all other municipalities not reflected in Exhibit A shall remain as approved by this Commission on March 24, 2003.⁵
3. CTPs shall not pass-through to the customer any surcharges or refunds relating to compensation past-due to a municipality.
4. In this instance, Staff has brought city-preferred rates to the Commission for approval, but this Order does not otherwise affect the authority previously delegated to Staff to approve administratively access line rates.⁶
5. All other relief requested, unless granted herein, is denied.

⁴ Open Meeting Tr. at 214-215 (May 8, 2001).

⁵ *Issues Related to Establishment of, and Annual Revisions to, Access Line Rates for Texas Municipalities*, Project No. 24640, Order Setting CPI-Adjusted Maximum Access Line Rates for Year 2003 (Mar. 24, 2003).

SIGNED AT AUSTIN, TEXAS the _____ day of November, 2003.

PUBLIC UTILITY COMMISSION OF TEXAS

REBECCA KLEIN, CHAIRMAN

JULIE PARSLEY, COMMISSIONER

PAUL HUDSON, COMMISSIONER

EXHIBIT A

CORRECTED MAXIMUM AND CITY-PREFERRED ACCESS LINE RATES

Shading indicates different city-preferred and maximum rates.

Central Telephone Company (CCN # 40096)

Municipality	Maximum Rates			City-Preferred Rates		
	Cat 1	Cat 1	Cat 2	Cat 3	Cat 2	Cat 3
City of Alvord	\$0.18	\$0.41	\$0.62	\$0.18	\$0.41	\$0.62
City of Aurora	\$0.80	\$1.84	\$2.80	\$0.80	\$1.84	\$2.80
City of Boyd	\$0.49	\$1.13	\$1.73	\$0.49	\$1.13	\$1.73
City of Chico	\$0.20	\$0.48	\$0.73	\$0.20	\$0.48	\$0.73
City of Clifton	\$0.43	\$0.84	\$1.06	\$0.43	\$0.84	\$1.06
City of Copperas Cove	\$0.38	\$0.75	\$0.75	\$0.38	\$0.75	\$0.75
City of Cranfills Gap	\$0.35	\$0.52	\$0.00	\$0.35	\$0.52	\$0.00
City of Decatur	\$0.59	\$0.59	\$0.59	\$0.59	\$0.59	\$0.59
City of New Fairview	\$1.43	\$3.29	\$5.01	\$1.43	\$3.29	\$5.01
City of Florence	\$0.35	\$0.78	\$1.20	\$0.35	\$0.78	\$1.20
City of Harker Heights	\$0.41	\$0.57	\$2.59	\$0.41	\$0.57	\$2.59
City of Holland	\$0.27	\$0.64	\$0.97	\$0.27	\$0.64	\$0.97
City of Houston	\$1.54	\$5.23	\$14.90	\$1.54	\$5.23	\$14.90
City of Humble	\$0.41	\$0.95	\$1.44	\$0.41	\$0.95	\$1.44
City of Hutto	\$1.60	\$3.67	\$5.59	\$1.60	\$3.67	\$5.59
City of Kempner	\$1.53	\$3.50	\$5.33	\$1.53	\$3.50	\$5.33
City of Killeen	\$0.33	\$1.06	\$1.79	\$0.33	\$1.06	\$1.79
City of Krum	\$0.27	\$0.64	\$0.98	\$0.27	\$0.64	\$0.98
City of Little River-Academy	\$0.33	\$0.74	\$1.13	\$0.33	\$0.74	\$1.13
City of Lometa	\$0.17	\$0.40	\$0.60	\$0.17	\$0.40	\$0.60
City of Milano	\$1.58	\$3.61	\$5.51	\$1.58	\$3.61	\$5.51
City of Nolanville	\$0.38	\$0.87	\$1.32	\$0.38	\$0.87	\$1.32
City of Rhome	\$0.80	\$1.84	\$2.81	\$0.80	\$1.84	\$2.81
City of Sanger	\$0.31	\$0.71	\$1.08	\$0.31	\$0.71	\$1.08
City of Stockdale	\$0.34	\$0.42	\$0.26	\$0.34	\$0.42	\$0.26
City of Sunset	\$1.36	\$3.15	\$4.78	\$1.36	\$3.15	\$4.78
City of West Columbia	\$0.39	\$0.39	\$0.00	\$0.39	\$0.39	\$0.00
Town of Buckholts	\$1.68	\$3.87	\$5.89	\$1.68	\$3.87	\$5.89
Town of Ponder	\$0.25	\$0.58	\$0.88	\$0.25	\$0.58	\$0.88
Town of Saint Jo	\$1.48	\$3.39	\$5.16	\$1.48	\$3.39	\$5.16

United Telephone Company (CCN # 40039)

Municipality	Maximum Rates			City-Preferred Rates		
	Cat 1	Cat 1	Cat 2	Cat 3	Cat 2	Cat 3
City of Anderson	\$0.23	\$0.53	\$0.80	\$0.23	\$0.53	\$0.80
City of Arp	\$0.46	\$0.71	\$0.00	\$0.46	\$0.71	\$0.00
City of Athens	\$0.70	\$1.63	\$2.47	\$0.70	\$1.63	\$2.47
City of Berryville	\$0.30	\$0.67	\$1.01	\$0.30	\$0.67	\$1.01
City of Bremond	\$1.56	\$3.58	\$5.45	\$1.56	\$3.58	\$5.45
City of Bridgeport	\$0.49	\$0.56	\$3.18	\$0.49	\$0.56	\$3.18
City of Brownsboro	\$0.47	\$0.76	\$0.00	\$0.47	\$0.76	\$0.00
City of Bullard	\$0.38	\$0.87	\$1.32	\$0.38	\$0.87	\$1.32
City of Caney City	\$0.30	\$0.68	\$1.04	\$0.30	\$0.68	\$1.04
City of Chandler	\$0.47	\$1.08	\$1.64	\$0.47	\$1.08	\$1.64
City of Coffee City	\$0.37	\$0.84	\$1.28	\$0.37	\$0.84	\$1.28
City of Commerce	\$0.50	\$1.00	\$1.00	\$0.50	\$1.00	\$1.00
City of Cooper	\$0.82	\$0.82	\$0.82	\$0.82	\$0.82	\$0.82
City of Cuney	\$1.10	\$2.51	\$3.84	\$1.10	\$2.51	\$3.84
City of Dublin	\$0.38	\$0.43	\$0.00	\$0.38	\$0.43	\$0.00
City of Edom	\$0.44	\$1.01	\$1.54	\$0.44	\$1.01	\$1.54
City of Eustace	\$0.44	\$1.56	\$0.00	\$0.44	\$1.56	\$0.00
City of Frankston	\$0.46	\$1.05	\$1.59	\$0.46	\$1.05	\$1.59
City of Gatesville	\$0.73	\$1.48	\$1.48	\$0.73	\$1.48	\$1.48
City of Goodlow	\$0.41	\$0.94	\$1.43	\$0.41	\$0.94	\$1.43
City of Graford	\$0.26	\$0.61	\$0.93	\$0.26	\$0.61	\$0.93
City of Groesbeck	\$0.31	\$0.69	\$1.06	\$0.31	\$0.69	\$1.06
City of Gun Barrel City	\$0.25	\$0.58	\$0.89	\$0.25	\$0.58	\$0.89
City of Hamilton	\$0.53	\$1.21	\$1.84	\$0.53	\$1.21	\$1.84
City of Hico	\$1.55	\$3.56	\$5.42	\$1.55	\$3.56	\$5.42
City of Kaufman	\$0.65	\$0.63	\$1.54	\$0.65	\$0.63	\$1.54
City of Kemp	\$0.67	\$1.56	\$2.36	\$0.67	\$1.56	\$2.36
City of Kerens	\$0.25	\$0.59	\$0.91	\$0.25	\$0.59	\$0.91
City of Kosse	\$1.49	\$3.42	\$5.20	\$1.49	\$3.42	\$5.20
City of Lake Bridgeport	\$0.50	\$0.50	\$0.00	\$0.50	\$0.50	\$0.00
City of Log Cabin	\$0.61	\$1.40	\$2.14	\$0.61	\$1.40	\$2.14
City of Mabank	\$0.23	\$0.57	\$0.00	\$0.23	\$0.57	\$0.00
City of Malakoff	\$0.51	\$1.17	\$1.77	\$0.51	\$1.17	\$1.77
City of Millsap	\$0.47	\$0.24	\$0.00	\$0.47	\$0.24	\$0.00
City of Murchison	\$0.57	\$1.31	\$2.00	\$0.44	\$1.00	\$1.51
City of Navasota	\$0.68	\$0.77	\$5.48	\$0.68	\$0.77	\$5.48
City of New London	\$0.40	\$0.52	\$0.00	\$0.40	\$0.52	\$0.00
City of Oak Grove	\$0.71	\$0.80	\$0.00	\$0.71	\$0.80	\$0.00
City of Oak Ridge	\$0.73	\$1.69	\$2.58	\$0.73	\$1.69	\$2.58
City of Palestine	\$0.81	\$0.81	\$0.81	\$0.81	\$0.81	\$0.81
City of Paradise	\$0.15	\$0.36	\$0.55	\$0.15	\$0.36	\$0.55

City of Payne Springs	\$0.32	\$0.71	\$1.09	\$0.32	\$0.71	\$1.09
City of Post Oak Bend	\$0.72	\$1.66	\$2.52	\$0.72	\$1.66	\$2.52
City of Runaway Bay	\$0.53	\$1.21	\$1.84	\$0.53	\$1.21	\$1.84
City of Seven Points	\$0.45	\$5.73	\$0.00	\$0.45	\$5.73	\$0.00
City of Star Harbor	\$0.23	\$0.53	\$0.80	\$0.23	\$0.53	\$0.80
City of Stephenville	\$0.55	\$1.25	\$1.91	\$0.55	\$1.25	\$1.91
City of Thornton	\$0.24	\$0.56	\$0.84	\$0.24	\$0.56	\$0.84
City of Tool	\$1.28	\$2.95	\$4.49	\$1.28	\$2.95	\$4.49
City of Trinidad	\$0.61	\$1.40	\$2.14	\$0.61	\$1.40	\$2.14
City of Troup	\$0.27	\$0.62	\$0.95	\$0.27	\$0.62	\$0.95
Town of Enchanted Oaks	\$0.13	\$0.18	\$0.00	\$0.13	\$0.18	\$0.00