PROJECT NO. 25433

RULEMAKING TO ADDRESS MUNICIPAL AUTHORIZED REVIEW OF ACCESS LINE REPORTING	**§ § §**	**PUBLIC UTILITY COMMISSION OF TEXAS**

ORDER ADOPTING AMENDMENT TO §26.467 AS APPROVED AT THE FEBRUARY 13, 2003 OPEN MEETING

The Public Utility Commission of Texas (commission) adopts an amendment to §26.467, relating to Rates, Allocation, Compensation, Adjustments and Reporting, with changes to the proposed text as published in the September 27, 2002 *Texas Register* (27 TexReg 9071). The proposed amendment clarifies some of the procedures related to the quarterly reporting of municipal access lines and consolidates the reporting requirements from §26.465 of this title (relating to Methodology for Counting Access Lines and Reporting Requirements for Certificated Telecommunications Providers) into one section. This amendment is adopted under Project Number 25433.

The commission does not adopt new §26.469, as proposed in the September 27, 2002 *Texas Register* (27 TexReg 9071), at this time. Based on written comments and comments from the public hearing, the commission concludes that the rule would need to undergo extensive changes. Therefore, the commission withdraws this section. The commission will hold further workshops before making a decision to republish this section in the future.

A public hearing was held at commission offices on December 4, 2002, at 10:00 a.m. Representatives from Allegiance Telecom, Inc., Global Crossing Telemanagement, Inc., Qwest

Communications Corp., and Time Warner Telecom of Texas, L.P. (CLEC Coalition), the Cities of Addison, Austin, Bedford, Colleyville, Denton, El Paso, Farmers Branch, Grapevine, Hurst, Keller, Missouri City, North Richland Hills, Pasadena, Round Rock, Tyler, Westlake, West University Place, and Wharton (Coalition of Cities), the City of Houston (Houston), the City of Dallas (Dallas), Texas Statewide Telephone Cooperative, Inc. (TSTCI), John Staurulakis, Inc. (JSI), the City of Plano (Plano), AT&T Communications of Texas, L.P., TCG Dallas, and Teleport Communications Houston, Inc. (AT&T), GTE Southwest Incorporated, doing business as Verizon Southwest (Verizon), Southwestern Bell Telephone, L.P., doing business as Southwestern Bell Telephone Company (SWBT), Valor Telecommunications, LLC (Valor), the Texas Telephone Association (TTA), and Fox, Smollen, and Associates (FSA) attended the hearing and provided comments. To the extent that these comments differ from the submitted written comments, such comments are summarized herein.

On October 28, 2002, the commission received written comments on the proposed new section §26.469 and amendment to §26.467 from the City of Garland (Garland), Coalition of Cities, the Texas Coalition of Cities for Utility Issues (TCCFUI), Houston, Plano, Dallas, AT&T, Verizon, TTA, SWBT, and CLEC Coalition. The commission received reply comments by November 12, 2002 from Dallas, Verizon, SWBT, TTA, and AT&T.

§26.467(k)(2) – Development of billing systems

Plano and Houston asserted that the commission should set a time period within which certificated telecommunications providers (CTPs) must have their billing systems in compliance with Texas Local Government Code, Chapter 283 (Chapter 283), and suggested that it be no longer than 90 days after obtaining certification from the commission.

SWBT and TTA contended that an arbitrary deadline for CTPs to revise their billing systems is unreasonable because of the time required to develop, implement and test the mechanisms involved. SWBT argued that any deadline should follow agreement from all parties regarding how to correctly classify all access lines.

Commission Response

The commission adds language to §26.467(k)(2) to clarify that a CTP's records must be sufficient to show compliance with the reporting requirements of this section, and that the CTP has an ongoing obligation to maintain a compliant billing system. The commission finds that no additional deadline is necessary for implementation of the billing system. The commission previously established a deadline for the reporting of access lines in subsection (k)(3). Arguably, this deadline would already apply to the billing system because the billing system is necessary to properly implement access line rates, by category, as established by the

commission. The billing system is merely a tool to provide the records necessary to meet the quarterly access line reporting deadline.

§26.467(k)(3) – Quarterly compensation and reporting (excluding §26.467(k)(3)(A)(iii))

Plano suggested the reference to §26.465 be removed since all substantive reporting requirements are slated for removal in the amendment to §26.465 proposed under Project Number 26412, *Rulemaking to Amend P.U.C. Substantive Rule 26.465*.

AT&T argued that the 30-day deadline to respond for request for information from the commission in subsection (k)(3)(A)(vi) is not unreasonable on its face, but the scope of the data request can affect the reasonableness of the 30-day deadline. AT&T contended that while it is probably not necessary to codify in this rule the ability of a party to seek an exception to the 30-day deadline for good cause, such ability should be recognized by the commission, with exceptions granted on a case by case basis.

Garland argued that the commission should require every CTP to file a quarterly report with every municipality whether or not the municipality requests this data. Verizon, on the other hand, recommended deleting the section requiring CTPs to make a copy of the report available to municipalities as a redundant administrative burden because the MARS makes the same information already available to the municipalities. Verizon further recommended changing the MARS to disallow any changes after the deadline without filing an amended type report.

Houston suggested that the commission add a statement to the Municipal Access Line Reporting System (MARS) to remind CTPs that submission constitutes certification under §26.467(k)(3)(A)(iv). SWBT proposed changing the rule language to reflect current filing requirements through the MARS.

Houston recommended that the issue of wire transfers for payments be addressed in the rule. Houston proposed that payments received later than 50 days following the close of the preceding quarter should be considered delinquent. Houston argued that each amended report should stand on its own and be treated as a new quarterly report. Houston recommended that CTPs should notify each affected municipality when an access line report is filed or amended.

Verizon argued that wire transfers should not be a mandated process, and contended that while a normal quarterly filing should not require notification to each and every city, a CTP should do so when a CTP amends a previous filing. TTA contended that Houston's suggestion regarding allowing review of amended reports is unnecessary because the language would trigger a new review period for each municipality and could open all previous reporting periods for municipal review. TTA further argued that ILECs acting in good faith to accurately reflect access line counts should not be penalized in the form of an authorized review.

Commission response

The commission keeps the reference to §26.465 in subsection (k) because some subsections of §26.465 affect the reporting requirements in §26.467.

The commission sees no need to include a good-cause exception to the 30-day deadline for a CTP to respond to a request for information from the commission in new subsection (k)(3)(A)(vi) because the commission will address requests for good-cause exceptions on a case-by-case basis, as needed.

The commission declines to delete subsection (k)(3)(A)(viii) mandating that each CTP shall provide copies of the access line reports to municipalities. The MARS, for the most part, satisfies this requirement for CTPs by providing a copy of the access line count report to all municipalities that can access the system. The provision should remain intact to ensure that those municipalities unable to access the MARS may obtain a copy of the report. The commission will consider other expansions and updates to the MARS when necessary.

The method of payment between CTPs and municipalities is beyond the scope of this project. Parties are free to negotiate methods of payment among themselves. Therefore, the commission declines to address the issue of method of payment in rule language.

The commission maintains that any amendment to an access line count report filing is tantamount to re-filing the entire access line count report. The amendment could be only a single line or every count in every category. Any change to an access line report past the deadline creates an entirely new access line count report, and is therefore subject to enforcement action pursuant to §26.468, relating to Procedures for Standardized Access Line Reports and Enforcement Relating to Quarterly Reporting. In keeping with this position, any amendment to an access line count report filing would re-start the window for any requests for data, whether from the commission or a municipality.

In the interest of clarity and simplicity, the commission, on its own initiative, modifies and adopts §26.467(k)(3)(A)(v) to identify a specific witness who has personal knowledge of the facts contained in a legally sufficient affidavit. A legally sufficient affidavit must positively, and without qualifications, represent the facts as disclosed in it to be true and within the affiant's personal knowledge. An affidavit that states that it is based on "personal knowledge and/or knowledge acquired upon inquiry" does not unequivocally show that it is based on personal knowledge. Despite this, the language, "to the best of my knowledge and belief" does not necessarily deprive an affidavit of evidentiary value. Whether or not acknowledged, any witness who testifies that facts are true and correct can do so only to "the best of his knowledge and belief." The language is simply superfluous, and the commission duly removes it.

§26.467 (k)(3)(A)(iii) (proposed as §26.467(k)(4) - Reconciliation Report)

Verizon proposed modifying the MARS to incorporate write-off information. Verizon recommended including an option of only requiring "net" uncollectible information, with detail of deductions and add back recoveries pursuant to authorized municipal reviews. Verizon stated that its billing system already produces the "net" amount and the rule should not require anything other than this type of system. Verizon noted that this type of information should provide the cities with all necessary information. Verizon further suggested an update for the MARS to allow providers to upload data into the system instead of rekeying information, which could increase errors.

Plano asserted that the reconciliation report should also include the number of access lines, by category and month, to which the deducted amounts are linked. Plano argued that such information would allow cities to determine if the documentation provided during a review supports the original summary totals for the line counts and dollars provided in the reconciliation report. Plano noted that it does not seek to deny CTPs the ability to deduct amounts related to uncollectible accounts, but contended that the burden of proof should lie with the CTPs to provide supporting documentation that such amounts relate back to access lines. Plano supported Verizon's suggestion that uncollectible data be incorporated into the MARS. However, Plano opposed Verizon's suggestion that CTPs be given an option of providing "net uncollectible information" with further detail regarding the add-backs and deduction detail to be

provided within the boundaries of an authorized review. Plano opined that if CTPs provided this information from the start, authorized reviews would not be needed.

SWBT argued that the commission should be the central point of information for all required reports, and that the MARS could be expanded to permit entry of uncollectibles information, both in the aggregate, as currently provided, and, to the extent technology allows, in a separated format, showing the total deduction and total payments received each month. SWBT contended that storing this information with the commission is the only way to ensure the requirement is applied in a non-discriminatory, competitively neutral manner. SWBT contended that Plano's request for specific numbers of lines by category and month is not possible because uncollectibles are credited back to accounts in the aggregate, and that municipal rights to review under Texas Local Government Code (LGC) §283.056(c)(3) do not constitute a right to demand new design and creation of new reports. SWBT argued that the law did not require CTPs to establish particular types of billing systems or to otherwise dictate business practices of CTPs.

Verizon supported a requirement to provide detail of amount deducted from the payments on an account-by-account basis, but disagreed with the proposal that reconciliation reports include the number of access lines, by category and month to which amounts were originally billed. Verizon commented the amount of the uncollectible should be included in the MARS.

Houston agreed with the comments filed by SWBT making write-off information readily accessible to municipalities via the MARS. Houston argued that a timely uniform reporting

schedule reconciling this action with the previous reports and remittance to cities is also important.

The Coalition of Cities argued that because the City of Grapevine (Grapevine) is subject to Texas Transportation Code, Chapter 22, §22.089, which provides that Grapevine remit a portion of revenue generated in the Dallas-Fort Worth airport terminal (DFW) to other municipalities, a separate access line report and/or reconciliation report for that specific geographic area should be provided to Grapevine with each quarterly payment. Coalition of Cities stated that Verizon is the principle provider of access lines in the DFW airport revenue sharing area, and that Verizon has informally indicated that it would not oppose such a provision in the rule. Coalition of Cities also held that a competitive local exchange carrier (CLEC) representative has also indicated that it would not oppose this filing requirement. Coalition of Cities stated that it did not oppose filing of the report with the commission as long as the cities could obtain a copy.

Verizon concurred with comments filed on behalf of Grapevine that recommended a separate designation for DFW for access line reporting and municipal fee compensation purposes.

AT&T opposed the Coalition of Cities' proposal requiring CTPs to provide additional access line reports specific to a designated geographic area within a city when that city has some statutory obligation to report revenue for that geographic area. AT&T contended that Chapter 283 has no provision supporting such a regulatory requirement and that such reporting is unnecessary to implement the purposes of Chapter 283. AT&T further argued that the commission has no

authority under the Texas Transportation Code, §22.089 which is applicable to Grapevine in this situation, or any other statute outside of Chapter 283 and perhaps the Public Utility Regulatory Act (PURA) that would permit the commission to impose such a regulation. AT&T opined that CTPs, including itself, may be willing, if they are able, to accommodate a city's need for specific right-of-way (ROW) compensation data, but there is no legal basis to require reporting of such data.

Commission response

For the sake of clarity, the commission modifies and moves this section, which was proposed as §26.467(k)(4) to §26.467(k)(3)(A)(iii). The modifications show that the reconciliation report is to be filed with the commission as part of the quarterly access line count report.

The commission finds that information about CTP uncollectibles should be readily accessible to municipalities via the MARS. The commission finds that Verizon's proposal to provide net uncollectible information is unlikely to provide useful information to municipalities. The commission further finds that Plano's proposal to delineate uncollectible information by category and month would be unduly burdensome on CTPs. The most reasonable solution would be to have CTPs provide current-period uncollectibles and prior-period write-offs as separate line items in the report, which would allow municipalities to monitor this figure and permit CTPs to collect reasonable supporting documentation. The commission will consider other expansions and updates to the MARS when necessary.

The commission declines to address specific geographic areas that are outside the scope of Chapter 283. However, if parties agree to a separate access line report and/or reconciliation report for a specific geographic area, then the CTP may certainly provide additional reports to the municipality with each quarterly payment. However, nothing in this rule changes the requirements that CTPs report access lines to the commission by municipality.

Report of reselling CTP by underlying CTP (proposed as §26.467(k)(5))

SWBT asserted that the proposed requirement that an underlying CTP report the identities of reselling CTPs was problematic as proposed. SWBT argued that if the proposed rule applies when reselling CTPs are the end-use customers, the underlying CTP is prohibited from providing this information under 47 U.S.C. §222, relating to Privacy of Customer Information, (Federal Telecommunications Act) (FTA). SWBT further argued that if the proposed rule applies when reselling CTPs use the access lines or facilities to provide telecommunications services to other end-use customers, then the exchange in which the reselling CTP obtains the facilities may not be related to the location of the end-use customer. Therefore, SWBT contended, the information provided would not necessarily result in useful information for the municipalities and would be unreasonable. SWBT emphasized that placing underlying CTPs in charge of reselling CTPs is unwieldy, ineffective, improper, and unworkable. SWBT maintained that the combination of a reselling CTP report and commission enforcement authority should be sufficient to address municipal concerns.

SWBT expressed concerns about the commission's legal authority to require the disclosure of the identity of reselling CTPs in light of FTA §222(b) and stated that incumbent owners of facilities are not the only underlying providers of access lines to reselling providers. SWBT contended that if any CTP must provide the identity of reselling CTPs, all CTPs should provide this information, thus placing all CTPs on equal footing.

SWBT and AT&T asserted that, for underlying CTPs to provide reports showing reselling CTPs that may be providing access lines in each municipality, it would take time, uniform commission orders to all CTPs, and record support concerning the inapplicability of FTA §222(b). SWBT and AT&T indicated that such "record support" should come in the form of a commission order directing all CTPs to provide such reports. SWBT and AT&T contended that such an order would be advisable in light of its concerns about and interpretations of the confidentiality requirements under FTA §222(b). SWBT and AT&T further indicated that such reports should be directed to the commission pursuant to its order and not at the request of a city or municipality.

SWBT further asserted that CTPs should be compensated for the effort, arguing that such reports would serve no business purpose for the CTPs. SWBT stated that the only information that is relevant or reasonably possible to provide on the reports is the identification of reselling CTPs that may be providing access lines in a city. SWBT, AT&T, and CLEC Coalition argued that it is theoretically possible to list the number of lines that are the product of "resale" under FTA

§251(b)(1) or (c)(4), but it is impossible to provide similar information for services provided via unbundled network element (UNE) loops under FTA §251(c)(3).

Verizon contended that the proposed language is in conflict with LGC §283.055(k). According to Verizon, only the commission should request information regarding reselling CTPs, and a CTP is only required to present available information to the commission. Verizon and AT&T stated each CTP should be responsible for reporting its access lines, and an additional administrative burden on behalf of providers that actually provide service to end users should not be unfairly placed on underlying providers.

AT&T and Verizon contended that any report submitted by an underlying carrier could not definitely certify that a reselling carrier was operating within a particular city or municipality or that it was even a CTP. AT&T and Verizon expressed that a disclaimer for each report would be a necessary component in order to reduce claims from the Cities that the information was insufficient or not in compliance with state law and/or commission rules.

CLEC Coalition stated that it does not object to the imposition of the requirement that CTPs report the identities of reselling CTPs in a given municipality and that it believes the provision should greatly assist municipalities in identifying reselling CTPs that are not in compliance with Chapter 283. CLEC Coalition asserted some concerns that the report may identify some companies as CTPs when they are not CTPs.

TTA contended that the identities of reselling CTPs to which the underlying carrier has provided access lines within a municipality's boundaries is proprietary to the reselling CTP. TTA argued that if municipalities have questions related to CTPs providing service within their boundaries, they should contact the CTPs directly rather than placing an unreasonable reporting burden on the underlying CTPs. TTA asserted that forcing an underlying provider to report access lines on proprietary information of the reselling CTP will result in inaccurate access line counts which will unreasonably impact the compensation to municipalities. TTA proposed that all CTPs should provide the commission with an affidavit attesting that they will directly report their access lines to the commission or that they have entered into and filed with the commission a written agreement with either the underlying CTP or a third party to report access lines on their behalf.

Plano urged that additions should be made to this reporting provision to require a 15-day response deadline and argued that the underlying CTP's report should include the total number of access lines sold to each reselling CTP. Plano stated that a disclaimer as to the accuracy of the information would be acceptable. Plano noted that its main concern was the identification of those reselling CTPs that may be operating within its boundaries. Once the identity is known, Plano stated that it could contact the reselling CTP directly. Moreover, Plano indicated that it would be advantageous to place such information on the MARS for easier access and downloading.

Dallas expressed some problem with a disclaimer as to the accuracy of the information. Dallas noted that if an underlying CTP does not know whether or not the company to which it is providing lines is a CTP, the lines should be reported as the underlying CTPs lines. Dallas further stated that an underlying CTP should not be providing lines to a company without knowing that the reselling CTP is a CTP. Dallas argued that it may not receive ROW fees due to the fact that the underlying CTP is providing access lines to a carrier under the impression that the reselling carrier is a CTP and, thus, paying its own municipal fees. Dallas acknowledged that it was not seeking an exact count of the reselling CTPs to which the underlying CTP has provided lines, but that the underlying CTP should know who the reselling CTPs are and their areas of operation.

Houston argued that the cost should rightfully be borne by the "cost causer."

Commission response

The commission finds that information regarding the identities of CTPs operating in a particular municipality is available to that municipality through the MARS. Municipalities requested this report of reselling CTPs by underlying CTPs to alleviate some concerns they have about accurate reporting. The commission finds that municipalities have recourse to the commission's complaint process and to LGC §283.056(c)(3), which references a municipal authorized review of the provider to ensure compliance with the access line reporting requirements of Chapter 283.

Therefore, the commission withdraws proposed subsection (k)(5) and thus declines to establish a requirement for underlying CTPs to report the identities of reselling CTPs by municipality.

The commission disagrees with those commenters contending that such a reporting requirement is counter to federal confidentiality limitations as expressed in FTA §222. The commission finds that requiring underlying CTPs to identify reselling CTPs by a suitable geographic unit that can be correlated to a given municipality is consistent with its directives from Chapter 283 to ensure compliance with access line reporting requirements. The commission concludes that FTA §222(c)(1), which relates to the privacy requirements for telecommunication carriers, allows for the disclosure to the commission of otherwise proprietary information for limited purposes when "required by law." Chapter 283, specifically §§283.001(a), 283.055(j) and (k), 283.056(c)(3), and 283.058, provide the commission sufficient authority to require disclosure to the commission of the identities of reselling CTPs by the underlying CTPs.

However, the commission does not resolve the issue of confidentiality concerns between municipalities and CTPs or the issue of suitable geographic units that can be correlated to a given municipality. In the light of these concerns, the ongoing commission processes to address accurate access line count reporting, and the other avenues available to municipalities, the commission declines to require the underlying CTPs to report the identities of the reselling CTPs by municipality at this time.

§26.467(k)(4) – Adequate proof of reporting and compensation responsibilities (proposed as §26.467(k)(6))

SWBT contended that its interconnection agreements include "municipal fees" in a list of taxes that a reselling CTP must pay, which addresses the reselling CTP's obligations under Chapter 283. SWBT argued that, the commission's approval of these interconnection agreements, along with the CLEC's signature on the agreement, should constitute "adequate proof."

SWBT asserted that the commission has tools available to ensure compliance that are unquestionably more effective than whatever notice might be given through a separate adequate proof document or any action for breach of the adequate proof agreement or the underlying interconnection agreement. SWBT argued that, if a reselling CTP is not willing to enter an adequate proof agreement, it is questionable whether the reselling CTP would be willing to adequately compensate the underlying CTP for this activity. SWBT further argued that the proposed rule would also greatly benefit the position of a municipality, and adversely affect an underlying CTP who made payments on behalf of a reselling CTP, when each are creditors in the bankruptcy of a reselling CTP.

As an alternative, SWBT proposed that the commission require all CTPs to file affidavits indicating their knowledge of the existence of Chapter 283 of the Texas Local Government Code, and commission rules promulgated thereunder, and stating one of the following intentions: (1) the CTP will directly report its access lines to the commission and remit payment to the

municipalities; or (2) the CTP has entered a written agreement with an underlying CTP or other third party (as identified in the affidavit) to report and remit on behalf of the CTP. SWBT provided alternative language for the subsection, including a conversion of the requirement that the underlying CTP obtain adequate proof in the form of a written agreement to a provision for reselling CTPs to fulfill their reporting and compensation requirements through their underlying CTPs with a written agreement in accordance with subsection (l).

The CLEC Coalition stated that its only objection to the proposed rules is with the adequate proof provision. The CLEC Coalition asserted that this proposed paragraph constitutes a shift in reporting and payment burdens from reselling CTPs to underlying CTPs and, therefore, departs significantly from current rule and conflicts with proposed §26.467(k)(3)(A)(iii) (renumbered as (k)(3)(A)(iv)). The CLEC Coalition argued that reselling CTPs are not required to enter into a written agreement with an underlying CTP, and that an underlying CTP has no leverage to require that reselling CTPs sign such agreements. Further, the CLEC Coalition argued that underlying CTPs have no means to ensure that a reselling CTP will comply with the reporting and payment requirements imposed by Chapter 283. The CLEC Coalition contended that leaving the underlying CTP on the hook for remitting access line fees for a reselling CTP who will not sign the written agreement is contrary to the anti-discrimination and competitive neutrality provisions of Chapter 283 and is inconsistent with the compensation scheme contemplated by current rules. The CLEC Coalition contended that the proposed subsection (k)(6) (renumbered as (k)(4)), dealing with adequate proof provisions, is not a viable solution. CLEC Coalition suggested that the proposed subsection (k)(5), requiring identification of

reselling CTPs, should significantly alleviate the problems the adequate proof subsection addresses and, if not, the issues should be revisited at a later date.

AT&T argued that the proposed rule unreasonably and unfairly shifts the burden of compliance from the reselling CTP to the underlying CTP. AT&T contended that the proposed rule should provide for prompt repayment by a reselling CTP to the underlying CTP, reimbursement by cities for double payments and the right to charge an administrative fee. AT&T asserted that the current rule should remain in effect with, perhaps, an affirmative obligation for the reselling CTP to provide the underlying CTP with adequate proof. AT&T maintained that the underlying CTP has no leverage to require agreement from the reselling CTP to ensure compliance, other than enforcement by the commission. AT&T asserted that the proposed rule creates a "black hole" by requiring first that an underlying CTP needs an agreement from a reselling CTP when the reselling CTP will do its own reporting and remittance, and secondly governs any agreement between a CTP and a third party who will do the reporting and remitting for the CTP, but, third, makes no provisions governing that third party relationship when there is no agreement. AT&T argued that current billing systems do not have the operational capabilities to selectively exempt one reselling CTP from a single surcharge, and that such a change would cost millions of dollars to implement. AT&T opposed the proposal by Coalition of Cities and Plano that would require a reselling CTP to provide a sworn affidavit.

Verizon complained that this rule is unduly burdensome. Verizon argued that the underlying CTP cannot accurately count lines without the reselling CTP cooperation because it is not privy

to information from a reselling CTP regarding which jurisdiction the end-use customer resides or the number of access lines ultimately being provided. Moreover, Verizon contended that existing law, LGC §283.055(k), and commission rules place the responsibility of reporting access lines on each CTP. Verizon proposed alternative language that, while recognizing the responsibility of each CTP to report its access lines, allows for agreements between the underlying carrier and a reselling CTP that provides for reporting and payment of municipal fees for the reselling CTP by the underlying carrier.

Verizon proposed that if a written agreement is used, the reselling CTP should be required to file a copy of the agreement with the commission to enhance credibility of the process. Verizon agreed with SWBT that commission oversight, using its enforcement authority to assure compliance by CTPs, would be the most efficient and practicable approach for all parties.

The Coalition of Cities requested that the "adequate proof" written agreement include a sworn affirmation, be filed at the commission, and provided to municipalities upon request. Disagreeing with SWBT, Coalition of Cities supported separate "adequate proof" documentation. Coalition of Cities cited previous failures of CTPs to file reports for many reselling CTPs as basis for drawing attention to CTP responsibility for access line reports and payments. Further, Coalition of Cities argued that the interconnection agreements between the underlying carrier and the reselling CTP are inadequate for enforcement purposes by third parties. Coalition of Cities opined that the multiple use of the "adequate proof" term in Chapter

283 requires specificity beyond a general requirement in interconnection agreements to obey all laws and rules.

Plano cited the report attestation requirements found in existing §26.465(g)(2)(B)(iv) and argued that notarization of the written agreements provides only a minimum amount of accountability to ensure that the agreement is understood by both the underlying and reselling CTPs. Plano requested that the commission adopt the §26.467(k)(6)(B) language offered by Coalition of Cities or, alternatively, to require that the written agreement be notarized as required by existing §26.465(g)(2)(B)(iv). Plano requested that the commission require underlying CTPs to file with the commission any written agreements with reselling CTPs, and that cities be allowed to request copies of such agreements, as proposed by the Coalition of Cities. Plano argued that, if no filing is required of the agreements, then there would be no way to ensure compliance.

Plano noted that LGC §283.055(k) places the responsibility for reporting reselling CTP counts on the underlying CTPs until the underlying CTP received "adequate proof" that the reselling CTP would be filing its own reports and payments to the cities. Plano supported Verizon's proposed revised language to this provision but provided additional changes to address a time frame within which the affidavit should be filed, whether a municipality may have access to that affidavit, and the identification of the names of the municipalities to which the reselling CTP would report access line counts.

Houston contended that the underlying CTP must provide the executed written agreement to the affected municipality. Houston argued that the written agreement should state that the reselling CTP will directly report all leased or resold access lines and remit related payments to the affected municipality. Houston agreed in concept with the language proposed by SWBT for proposed subsection (k)(6)(A) and (B) but with Houston's suggested modifications.

In its reply comments, SWBT stated that it agreed with other CTPs that the commission should not delegate to underlying CTPs the policing of access line reporting for reselling CTPs. SWBT said the comments of some municipalities express a lack of confidence in the integrity of any CTP and, therefore, there is a need for commission oversight throughout the process of an authorized review. SWBT urged the commission to be actively involved in the enforcement of CTP reporting by using its ability to revoke the certificates of CTPs that fail to comply with Chapter 283 and related rules. SWBT suggested that, if CTPs provide written confirmation to the commission that they will file their own reports, and underlying CTPs provide lists of potential reselling CTPs to the commission, then municipalities will have access to the information needed to pursue non-complying CTPs.

Prompted by staff questions at the public hearing, parties discussed varying interpretations of LGC §283.055 with regard to the obligations it places on all CTPs, the exceptions carved out for those CTPs with "adequate proof" in place, and the extent to which a default burden is imposed on underlying CTPs when no "adequate proof" is in place. The CLEC Coalition proposed that

when "CTP" is used in LGC §283.055(i) it references reselling CTPs, rather than all CTPs, based on the history prompting the legislation.

Dallas and Coalition of Cities disagreed that the proposed rule constituted any shift in burden. Dallas argued that it was merely a positive rewording of a statutory requirement that is written in the negative; and that the statute clearly puts the burden on underlying carriers because it says they have to report it unless they have adequate proof. Coalition of Cities noted that this interpretation was supported by the fact that each statutory mention of adequate proof is stated in the direction of it flowing from the reselling CTP to the underlying carrier, and inferred that an informational letter from an underlying carrier is not sufficient.

Dallas and Coalition of Cities emphasized that the underlying CTP should be obligated to know that the reselling CTP has acknowledged its responsibility to report, and articulated a need for an executed agreement or some signed acknowledgement that the reselling CTP understands its obligations. Coalition of Cities observed that the legislature, like municipalities, did not know where the access lines terminate, so they appropriately put the burden on underlying CTPs to get the CLEC to acknowledge that it will report and pay the fees.

Coalition of Cities said it should be a matter of good business practice for an underlying carrier to obtain a reselling CTP's certificate number, and that if interconnection agreements contained the certificate numbers of the parties involved, the difficulty in locating the reselling CTPs would be reduced. CLEC Coalition explained that an arrangement between an underlying CTP

and a reselling CTP does not necessarily entail an interconnection agreement, such as when a CLEC sells capacity to another CLEC, and said it is common in such agreements to articulate that the CLEC providing capacity will not undertake any obligation to comply with Chapter 283.

Coalition of Cities agreed that it would be a very difficult task for underlying carriers to count access lines without cooperation from the reselling CTP, but said that fact was known when the statute was written and likely was part of the reason the statute provided for the use of an adequate proof agreement, given the phrasing of the statute.

JSI expressed concern about the potential burdens of adequate proof requirements, explaining that the agreements it enters into with reselling CTPs are binding contracts, leaving both sides with obligations. JSI emphasized that enforcement should reside with the commission since its resale agreements specify that both parties will abide by commission rules.

SWBT stressed that it cannot accurately count the reselling CTPs' lines if the reselling CTP refuses to cooperate by entering into an adequate proof agreement. SWBT emphasized that it also wants to hold reselling CTPs accountable, like cities do, because it is in a less competitive position in the market for a given service when it covers the payments of reselling CTP competitors that escape costs when they escape their Chapter 283 obligations. SWBT argued that a sufficient and practical solution would be that underlying CTPs provide simple notification to reselling CTPs of Chapter 283 obligations, backed by adequate filings from reselling CTPs with the commission and the commission's enforcement abilities. SWBT concluded that the

main point of contention here is whether an agreement between underlying CTP and reselling CTP is necessary to effectuate adequate proof.

SWBT and Coalition of Cities deliberated during the hearing and jointly proposed that concerns surrounding adequate proof would be best and most conveniently addressed on a going forward basis by incorporating into the certificate application process a sworn statement of intentions regarding the reporting of access lines and payment of municipal fees. They proposed that the applicant would select from one of three commitments: (1) directly make its own reports; (2) show evidence of a written agreement with an underlying carrier to meet its obligations; or (3) provide evidence of an agreement with a third party to meet its responsibilities. They also stressed that the commission will post all certifications on its website.

Commission response

Pursuant to the commission's decision regarding the report of reselling CTPs by underlying CTPs, as proposed in subsection (k)(5), the commission finds that it is unnecessary to add language to new subsection (k)(4) requiring information on reselling CTPs to a municipality and deletes such language, as originally proposed. The commission carries forward the definition of "underlying CTP" and "reselling CTP" from proposed subsection (k)(5).

In new subsection (k)(4), the commission establishes the minimum elements that comprise "adequate proof," requires that the business relationship between underlying and reselling CTPs

must include an agreement containing the adequate proof elements, allows adequate proof provisions to be part of interconnection or other business agreements among the parties, and adds an explicit requirement that reselling CTPs must provide adequate proof to operate in conjunction with the statutory obligation that underlying CTP's must obtain adequate proof.

The commission finds that the overall reporting and compensation process and results would be enhanced if the "adequate proof" referenced in Chapter 283 were a written, rather than oral, agreement. These concepts are incorporated into new §26.467(k)(4)(B), which defines "adequate proof" as a written agreement that specifically cites, and assigns responsibility for compliance with, Chapter 283.

Similarly, the commission agrees that the reporting process must specifically designate the CTP that will bear the responsibility for meeting the reporting and compensation requirements of Chapter 283. It should be noted that a general provision in an agreement that the reselling CTP will "obey all applicable laws and rules" is insufficient. However, the commission finds that "adequate proof" can be part of a more comprehensive business agreement between the underlying and reselling CTPs. The commission acknowledges such in new subsection (k)(4)(F), which holds that the underlying CTP must acquire this adequate proof within 90 days of the effective date of this section, at the time of the signing of an initial interconnection agreement, or at the time of signing its agreement for the provision of services if the parties do not have an interconnection agreement.

Likewise, since "adequate proof" is a fundamental mechanism for holding CTPs responsible for their reporting obligations, the commission finds the "adequate proof" agreements should be available to the commission and municipalities. The commission assigns that responsibility to all CTPs in the new subsection (k)(4)(H), which holds that a CTP, whether an underlying CTP or reselling CTP, shall make its adequate proof agreements available for review by municipalities and the commission upon request.

The commission disagrees with parties that contended that proposed new subsection (k)(6)(C) shifts a burden from the reselling CTP to the underlying CTP. Proposed new subsection (k)(6)(C) holds that underlying CTPs and their reselling CTPs shall, as part of their business relationship, enter into an agreement that meets the adequate proof standard to ensure that each CTP reports and compensates municipalities for those lines that it uses to serve end-use customers. With regard to this issue, the commission interprets the provisions of LGC §283.055 as follows. LGC §286.055(j) requires all CTPs to file a quarterly report of access line counts. LGC §283.055(k) excepts some CTPs from the requirements of LGC §286.055(j), namely those underlying CTPs that obtain "adequate proof" from a reselling CTP that the reselling CTP will separately and directly report the access lines it provides to end-use customers. Similarly, LGC §283.055(f) requires that all CTPs must make payments to municipalities based on the calculations reported pursuant to LGC §286.055(j). In parallel fashion, LGC §283.055(i) then excepts one group of CTPs from making those payments. Again, this group would be the underlying CTPs that have been furnished with "adequate proof" from the reselling CTP that the

reselling CTP will be directly remitting the fees based on the access lines reported pursuant to LGC §286.055(j).

The commission agrees that reselling CTPs have a direct statutory obligation under LGC §283.055(f) and (j), to ensure that access lines are reported and the appropriate fees are paid to the municipalities. Therefore, the commission makes several revisions to specify the reselling CTP's responsibility to provide adequate proof. First, in the new subsection (k)(4)(C), the commission requires both underlying and reselling CTPs to enter into an agreement containing adequate proof provisions. Secondly, new subsection (k)(4)(D) states the underlying CTP's responsibility to obtain adequate proof. New subsection (k)(4)(E) then requires the reselling CTP to supply the adequate proof upon request. New subsection (k)(4)(G) requires the underlying CTP, in the event of its failure to obtain adequate proof from the reselling CTP, to include the reselling CTP's lines in its access line count report and to likewise compensate municipalities.

The commission understands that underlying CTPs who fail to obtain adequate proof from a reselling CTP may be unable to provide accurate access line count reports and related remittances without the cooperation of the reselling CTP. However, the commission does not see that the statute allows any latitude on this matter. Further, because underlying CTPs provide reselling CTPs with services essential to the reselling CTP conducting business, the commission disagrees with the argument that underlying CTPs do not have sufficient leverage to obtain adequate proof.

The commission acknowledges that it may take some time to get adequate proof agreements in place for CTPs that already have interconnection agreements or other business agreements in place but do not have any provisions therein or separately that meet the adequate proof requirements in this section. Therefore, in new subsection (k)(4)(F), the commission allows 90 days to make such arrangements.

The commission notes that some parties were confused about the distinction between the adequate proof agreement and the written agreement arranging for the underlying CTP to serve as the designated reporting party reporting on behalf of a reselling CTP in new §26.467(l). The adequate proof agreement is a required agreement between all underlying and reselling CTPs that shows that the underlying CTP informed the reselling CTPs of their obligations under Chapter 283. However, the designated reporting arrangement is an optional arrangement in which the designated reporting party agrees to file quarterly access line count reports on a disaggregated basis *as directly related to the CTP for which it is reporting*. If that designated reporting party is the underlying CTP, then the underlying CTP would be reporting the lines of the reselling CTP on the reselling CTP's behalf only with its express permission. Therefore, while these written agreements may serve the same function and, indeed, may be the same document, the commission does not require that they be the same document.

§26.467(l) – Alternate reporting and compensation arrangements

Coalition of Cities, Plano, and Verizon opposed deletion of the existing §26.467(l)(1)-(3), on the ground that these provisions clarify that all CTPs are to report and compensate municipalities. Coalition of Cities, Plano, and Verizon argued that these subsections clarify that CTPs that "own" facilities in the rights-of-way compensate cities directly and that CTPs that "do not own" facilities in the rights-of-way have an option of either compensating cities directly or compensating cities indirectly through the underlying CTP, so long as they have reached a written agreement with the underlying CTP. Coalition of Cities, Plano, and Verizon held that this written agreement is the same as referred to in proposed subsection (k)(6) (renumbered as (k)(4)), addressing adequate proof. Coalition of Cities, Plano, and Verizon asserted that the paragraphs proposed for deletion explain the necessity of a written agreement as evidence of adequate proof of the CTP responsible for access line reporting and compensation. Coalition of Cities, Plano, and Verizon contended that existing §26.467(l)(1)-(3) should either be re-designated as subsection (k)(6)(A) or included in new proposed §26.469.

Houston proposed a minor change to clarify that the designated party may charge a reasonable administrative fee to the CTP for reporting and compensating a municipality on its behalf. Garland argued that the administrative fee should be charged to the CTP, and should not reduce the fee paid to the municipality.

While agreeing with permitting CTPs to file access line counts on behalf of affiliates on an aggregated basis, SWBT argued that the rule should specifically provide that payments may also be made on an aggregated basis, and that the commission should maintain the affiliate

information. SWBT asserted that CTPs should be permitted to voluntarily enter alternate reporting and compensation agreements, as proposed by §26.467(l), but that reporting access line counts and remitting payments on behalf of another CTP should only arise out of an agreement between providers to do so, not by default, as proposed in subsection (k)(6) (renumbered as (k)(4)). SWBT maintained that to do otherwise would allow the reselling CTP to shift to the underlying CTP the burden of reporting and remitting accurate access line reports and fees by refusing to sign adequate proof agreements. SWBT further argued that in many instances, the underlying CTP has no way to determine the number of access lines a reselling CTP is providing to end-use customers.

Verizon recommended modification of the MARS to allow a CTP to include all certificate numbers in its filings.

Commission response

The commission notes that it did not carry its definitions of "underlying CTP" and "reselling CTP" forward from subsection (k). The commission modifies subsection (l) to include defining language by adding new subsection (1)(1) to reference subsection (k).

The commission finds that §26.467(l)(1) and (2), as proposed for deletion, merely repeat the provisions of subsection (k) of this section, related to the need for all CTPs to report their own quarterly access line count report and to compensate municipalities accordingly. These

provisions are clearly extraneous, and the commission declines to retain them. Existing §26.467(l)(3), as proposed for deletion, held that reselling CTPs may seek to have the underlying CTP report for them with a written agreement. Proposed §26.467(l)(1) allows for the same arrangement. Therefore, the commission declines to retain existing §26.467(l)(1) – (3), as proposed for deletion.

The commission notes that some parties were confused about the distinction between the adequate proof agreement and the written agreement arranging for the underlying CTP to serve as the designated reporting party reporting on behalf of a reselling CTP in new §26.467(l). The adequate proof agreement is a required agreement between all underlying and reselling CTPs that shows that the underlying CTP informed the reselling CTPs of their obligations under Chapter 283. However, the designated reporting arrangement is an optional arrangement in which the designated reporting party agrees to file quarterly access line count reports on a disaggregated basis *as directly related to the CTP for which it is reporting*. If that designated reporting party is the underlying CTP, then the underlying CTP would be reporting the lines of the reselling CTP on the reselling CTP's behalf only with its express permission. Therefore, while these written agreements may serve the same function and, indeed, may be the same document, the commission does not require that they be the same document.

The commission declines to adopt language regarding the fee that the designated reporting party may charge a CTP, but stipulates that any such fee may not affect the municipal compensation. The commission finds that in affiliate relationships, payments, like reports, may be made on an

aggregate basis. Verizon suggested modifying the MARS to include all certificate numbers in an aggregate filing. The commission notes that the "Consolidated CTP" function allows CTPs to inform the commission when filing for more than one CTP on an aggregated basis, and orders CTPs to use this function when necessary, but only when necessary. Therefore, the commission adopts proposed §26.467(l)(2) as §26.467(l)(3) with minor clarifying changes.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2003) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. This amendment is also adopted under the Texas Local Government Code, §283.056(c)(3) and §283.058, which grant the commission the jurisdiction over municipalities and certificated telecommunications providers necessary to enforce the whole of Chapter 283 and to ensure that all other legal requirements are enforced in a competitively neutral, non-discriminatory, and reasonable manner.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and Texas Local Government Code §283.056 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, unless specified otherwise in this section.

(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 (l) 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.

(k) **CTP implementation of commission-established rates.** The requirements listed in this subsection shall apply to all CTPs in the State of Texas, except those exempted pursuant to §26.465 of this title.

(1) **Interim compensation.** 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 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.

(2) **Billing systems.** A CTP shall develop and maintain billing systems as necessary to implement access line rates, by category, as established by the commission. These systems must be sufficient to substantiate compliance with the access line reporting requirements in this section.

(3) **Quarterly compensation and reporting.** All CTPs are responsible for reporting to the commission their own quarterly access line count report and compensating each municipality, absent a reporting arrangement as described in subsection (l) of this section. All CTPs shall implement commission-established rates for each quarter. Unless otherwise specified, periodic reporting shall be consistent with this subsection and §26.465 of this title.

(A) **Quarterly access line count report.**

(i) No later than 45 days from the end of the preceding calendar quarter, a CTP shall file a quarterly access line count report for the preceding calendar quarter with the commission.

(ii) 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.

(iii) If a CTP deducts or includes a direct write-off pursuant to subsection (m)(2) of this section, the CTP shall complete a reconciliation report, showing a monthly delineation of the amount added to the total payment due to previously uncollectible direct write-offs, and the amount deducted from the total payment due to direct write-offs. This report shall be part of the quarterly access line count report filing.

(iv) The report shall exclude lines that are resold, leased or otherwise provided to other CTPs unless the CTP is reporting on behalf of another CTP pursuant to subsection (l) of this section.

(v) The CTP contact person listed in the Municipal Access Line Reporting System (MARS) at the time that the quarterly access line counts are entered for each quarter shall be the duly authorized representative of the CTP who certifies that the information contained in the report is based upon personal knowledge and is true and correct.

(vi) The CTP shall respond to any request for additional information from the commission within 30 days from receipt of the request.

(vii) Reports required under this subsection may be used by the commission only to verify the number of access lines that serve customer premises within a municipality.

(viii) 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.**

(i) All CTPs shall apply the most recent commission-established rates to access lines in a municipality.

(ii) 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.

(iii) All payments for calendar quarters shall be made no later than 45 days from the end of that quarter.

(4) **Adequate proof of reporting and compensation responsibilities**.

(A) Definition of "underlying CTP" and "reselling CTP."

(i) An underlying CTP is a CTP that owns facilities or provides facilities or capacity to another CTP in the rights-of-way of municipalities.

(ii) A reselling CTP is a CTP to whom an underlying CTP resold, leased or otherwise provided access lines that extend to the end-use customer's premises.

(B) For the purposes of this paragraph, "adequate proof" shall consist of a written agreement that specifically cites, and assigns responsibility for compliance with, the Texas Local Government Code, Chapter 283, and the reporting and compensation requirements of this subchapter.

(C) To ensure that each CTP reports and compensates municipalities for those lines that it uses to serve end-use customers, underlying CTPs and their reselling CTPs shall, as part of their business relationship, enter into an agreement that meets the adequate proof standard of this paragraph.

(D) An underlying CTP shall obtain adequate proof that the reselling CTP will directly report its lines and remit the related payments to municipalities.

(E) A reselling CTP must provide adequate proof to the underlying CTP upon request.

(F) The underlying CTP must acquire this adequate proof within 90 days of the effective date of this section, at the time of the signing of an initial interconnection agreement, or at the time of signing its agreement for the

provision of services if the parties do not have an interconnection agreement

(G) If the underlying CTP fails to obtain adequate proof that the reselling CTP will include the access line in its monthly count and remit payment on those access lines to the municipality, the underlying CTP must include such lines in its monthly count of access lines and remit a right-of-way fee to the municipality.

(H) A CTP, whether an underlying CTP or reselling CTP, shall make its adequate proof agreements available for review by municipalities and the commission upon request.

(l) **Alternate reporting and compensation arrangements**. Notwithstanding any other subsection, a CTP shall be subject to the following terms when making alternate reporting and compensation arrangements.

(1) For the purposes of this subsection, "underlying CTP" and "reselling CTP" shall have the same meanings as assigned in subsection (k) of this section.

(2) **Designated reporting party.** A CTP may reach a written agreement separate from any other agreement, including the adequate proof agreement, to have a designated reporting party fulfill the reporting and compensation requirements of this section on its behalf. If the CTP is a reselling CTP, the designated reporting party may be the underlying CTP.

(A) If such an agreement is reached, the designated reporting party shall file the quarterly access line count report in each municipality, by category, on behalf of the CTP, and also compensate the municipality for those lines.

(B) The designated reporting party shall file the quarterly access line count report for each municipality, by category, with the commission on a disaggregated basis by CTP.

(C) Nothing in this subsection shall prevent a designated reporting party from charging a reasonable administrative fee for reporting and compensating a municipality on behalf of a CTP.

(D) Nothing in this subsection shifts the liability from a CTP, reselling or otherwise, for non-payment of municipal compensation and failure to report pursuant to this section.

(3) **Affiliates.** A CTP may file access line reports and remit payments for itself and its affiliates that are CTPs on an aggregated basis. If the CTP does so, the CTP shall include a list of the affiliates and their certification numbers in its quarterly access line count report.

(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 each affected municipality 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 changes to the text as proposed, and that §26.469, relating to Municipal Authorized Review of a Certificated Telecommunication Provider's Business Records, is withdrawn.

ISSUED IN AUSTIN, TEXAS ON THE 5th DAY OF MARCH 2003.

PUBLIC UTILITY COMMISSION OF TEXAS

_____

Rebecca Klein, Chairman

_____

Brett A. Perlman, Commissioner

_____

Julie Caruthers Parsley, Commissioner