

PROJECT NO. 24640

ISSUES RELATED TO	§	PUBLIC UTILITY COMMISSION
ESTABLISHMENT OF, AND ANNUAL	§	
REVISIONS TO, ACCESS LINE	§	OF TEXAS
RATES FOR TEXAS	§	
MUNICIPALITIES	§	

**ORDER REMOVING THE CITY OF OAKHURST
FROM THE COMMISSION MUNICIPAL ACCESS LINE REPORT SYSTEM
AND ORDER DELEGATING AUTHORITY TO STAFF TO IMPLEMENT RATE
CHANGES AND MODIFICATIONS IN COMMISSION ACCESS LINE
DATABASES IN RESPONSE TO CHANGES IN STATUS OF A MUNICIPALITY**

I. Introduction

This Order removes the City of Oakhurst (City) from the Municipal Access Line Report System (MARS) database as the municipality has been abolished pursuant to TEX. LOC. GOV'T CODE §62.004. This Order further delegates future authority to the Staff (Staff) of the Public Utility Commission of Texas (Commission), to administratively address any rate changes and modify all necessary Commission access line databases related to the implementation of Chapter 283 of the Texas Local Government Code regarding changes in status of a municipality, including but not limited to, the abolition of a municipality pursuant to TEX. LOC. GOV'T CODE §62.004.

The City initially participated in the process of establishing fee per access line rates under TEX. LOC. GOV'T CODE Chapter 283, but the City was abolished pursuant to TEX. LOC. GOV'T CODE §62.004 on May 17, 2000 by the Commissioners Court of San Jacinto County, Texas.

II. Background

Under § 283.055(b) of the Texas 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 CTP. Both of these requirements were met when the Commission

adopted municipal rates and CTP statewide averages.¹ CTPs were required to implement the Commission-established final rates no later than June 1, 2000.

This Order deletes the fee per access line rate for each category and removes the City from the MARS database. This municipality existed in 1998 and chose before May 2000 to participate in the framework established in Chapter 283 for compensation of public right-of-way usage. However, pursuant to TEX. LOC. GOV'T CODE §62.004, the Commissioners Court of San Jacinto County, Texas abolished the City of Oakhurst on May 17, 2000.

III. Findings of Fact

1. The City of Oakhurst existed in 1998 and chose before May 2000 to participate in the framework established in Chapter 283 for compensation of public right-of-way usage.
2. Pursuant to TEX. LOC. GOV'T CODE §62.004, the Commissioners Court of San Jacinto County, Texas abolished the City of Oakhurst on May 17, 2000.
3. The former Mayor of the City of Oakhurst has notified the Commission that the City was abolished on May 17, 2000 by order of the Commissioners Court of San Jacinto County, Texas.
4. Eastex Telephone Cooperative, Inc. (Eastex) is the only Certificated Telecommunications Provider (CTP) serving the City of Oakhurst. On May 17, 2000, Eastex was collecting and remitting access line fees to the City under an existing franchise agreement. Eastex ceased collecting and remitting access line fees when notified by the City Mayor in May 2000 that the City had been abolished. A letter from Eastex Telephone Cooperative stating such is shown as Exhibit A, attached hereto. Pursuant to PURA §60.004(a), no other CTP has

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

submitted a bona fide request to serve the City of Oakhurst. Letters from Verizon, AT&T and Sage Telecom, Inc. attest to the fact that they did not serve the City nor did they collect or remit any access line fees to the City and are shown as Exhibit B, attached hereto.

IV. Conclusions of Law

1. The Commission has jurisdiction of this matter under TEX. LOC. GOV'T CODE §§ 283.005, 283.051, 283.055, and 283.058, as well as PURA §§ 14.001, 14.002, 14.003, and 52.002.
2. The purpose of Chapter 283 is to establish a uniform method for compensating municipalities for the use of a public right-of-way by CTPs that: (1) is administratively simple for municipalities and 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.
3. Section 283.051(a) 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.
4. Section 283.051(c) provides that fees imposed under Chapter 283 constitute “a municipal fee” or “municipal fees” within the meaning of PURA² §§ 51.009 and 54.206.

² Public Utility Regulatory Act (PURA), as codified in TEX. UTIL. CODE ANN. §§ 11.001 – 64.158 (Vernon 1998 & Supp. 2001).

5. Section 283.053(b) provides that the base amount for a municipality is the total amount of revenue received by the municipality in franchise, license, permit, and application fees and in-kind services or facilities from CTPs in 1998 within the boundaries of the municipality.

V. Ordering Paragraphs

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

1. The City of Oakhurst shall be withdrawn from the MARS database.
2. CTPs shall not prospectively report access lines for the City of Oakhurst, nor collect and remit fee per access line rates for use of the public ROW.
3. CTPs shall implement this change no later than September 1, 2004.
4. The Commission delegates future authority to Staff to administratively address any rate changes and modify all necessary Commission access line databases related to the implementation of Chapter 283 of the Texas Local Government Code regarding changes in status of a municipality, including but not limited to, the abolition of a municipality pursuant to TEX. LOC. GOV'T CODE §62.004.
5. All other relief requested, unless granted herein, is denied.

SIGNED AT AUSTIN, TEXAS the _____ day of July, 2004.

PUBLIC UTILITY COMMISSION OF TEXAS

JULIE PARSLEY, COMMISSIONER

PAUL HUDSON, CHAIRMAN

BARRY SMITHERMAN, COMMISSIONER