

PROJECT NO. 24640

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

**ORDER ESTABLISHING ACCESS LINE RATES
FOR THE CITY OF RIO BRAVO**

I. Introduction

This Order establishes the fee per access line rates for the City of Rio Bravo (City). The City did not initially participate in the process of establishing fee per access line rates under TEX. LOC. GOV'T CODE Chapter 283, but now elects to set such rates. Accordingly, fee per access line rates for the City are shown in Exhibit A, attached hereto. Certificated Telecommunications Providers (CTPs) shall apply these rates prospectively from April 1, 2004.

II. Background

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 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.

However, due to either non-participation or subsequent incorporation by certain municipalities, the Commission did not set rates for all existing Texas municipalities in

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

May 2000. This Order establishes the fee per access line rates for one newly participating municipality: the City of Rio Bravo. This municipality existed in 1998, but chose after May 2000 to participate in the framework established in Chapter 283 for compensation of public right-of-way usage. SBC Texas (SBC) provided access line counts for the City, which the Commission applied to the City of Rio Bravo's 1998 base amount. The City elected to use the Commission-established default allocation, pursuant to Chapter 283 and P.U.C. SUBST. R. 26.467 regarding *Rates, Allocation, Compensation, Adjustments and Reporting*. This municipality has elected to impose the maximum rates, and it is that maximum rate that is reflected in Exhibit A.

III. Findings of Fact

1. The Commission's records establish a cumulative line count for all reporting CTPs within the City of Rio Bravo's municipal boundaries.
2. Although eligible to participate, some municipalities did not participate in the framework established in Chapter 283 for compensation of public right-of-way usage, but are now electing to do so.
3. The City of Rio Bravo existed in 1998, but chose after May 2000 to participate in the framework established in Chapter 283 for compensation of public right-of-way usage.
4. The Commission did not set rates for all existing Texas municipalities in May 2000, due to either non-participation or subsequent incorporation by certain municipalities.
5. The Commission has established maximum rates for the City of Rio Bravo using the formula established in P.U.C. SUBST. R. 26.467(c), as reflected in Exhibit A.

6. The City of Rio Bravo has notified the Commission that it intends to adopt its maximum access line rates as its city-preferred rates.
7. 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.²

IV. Conclusions of Law

1. The Commission has jurisdiction of this matter under Local Government 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 fee per access line rates established by the Commission, when applied to the total number of access lines by category in the City of Rio Bravo, is equal to that municipality's base amount.
3. The fee per access line rates, as established by the Commission, accepted by the municipality, and shown in Exhibit A, are consistent with and meet the requirements of Chapter 283 and the Commission's rules.
4. Consistent with Finding of Fact No. 7, the Commission finds that no authority exists under Chapter 283 to allow surcharges with respect to newly participating municipalities.
5. 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)

² Open Meeting Tr. at 214-215 (May 8, 2001). Project No. 23956, 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 (Nov. 25, 2003).

- 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.
6. 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.
 7. Section 283.051(c) provides that fees imposed under Chapter 283 constitute “a municipal fee” or “municipal fees” within the meaning of PURA³ §§ 51.009 and 54.206.
 8. 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.
 9. Section 283.055(b) 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), 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.
 10. Section 283.055(d) 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. Participating municipalities

³ Public Utility Regulatory Act (PURA), as codified in TEX. UTIL. CODE ANN. §§ 11.001 – 64.158 (Vernon 1998 & Supp. 2001).

- included their requested allocation as part of the original base amount filings. Pursuant to §283.055(d), the Commission developed a default allocation of 1:2.3:3.5 that is reflected in P.U.C. SUBST. R. 26.467(e). This default allocation represents an average of all allocation ratios filed by participating municipalities.
11. P. U.C. SUBST. R. 26.465(g)(2)(A)(i) required all CTPs to file an access line count reflecting lines in place as of December 31, 1998, no later than January 24, 2000. If a CTP could not file a 1998 access line count, that CTP could request a good cause exception and file the most recent line count available for December 1999. Under P.U.C. SUBST. R. 26.467(d), where a CTP does not provide an actual 1998 access line count, the Commission shall use the CTP's 1999 access line count to derive an estimated 1998 access line count, using estimated statewide growth rate figures.
12. 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 =	$(A3*B)/L3$

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

V. Ordering Paragraphs

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

1. The fee per access line rates shall be as shown on Exhibit A for the City of Rio Bravo.
2. These rates shall be applied prospectively from the date of this Order.
3. This Order does not authorize surcharges for recovery of any compensation for right-of-way usage prior to implementation of these rates.
4. CTPs shall not impose surcharges with respect to newly participating municipalities.
5. CTPs shall implement the fee per access line rates as shown in Exhibit A for the City of Rio Bravo no later than April 1, 2004.
6. All other relief requested, unless granted herein, is denied.

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

PUBLIC UTILITY COMMISSION OF TEXAS

JULIE PARSLEY, COMMISSIONER

PAUL HUDSON, COMMISSIONER

EXHIBIT A

City of Rio Bravo	Cat 1	Cat 2	Cat 3
Maximum (and City-preferred) Rates	\$0.79	\$1.81	\$2.75