

PROJECT NO. 23379

ISSUES RELATING TO ACCESS	§	PUBLIC UTILITY COMMISSION
LINE REPORTING AND	§	
COMPENSATION PURSUANT TO	§	OF TEXAS
SUBSTANTIVE RULES 26.465 AND	§	
26.467	§	

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 Public Utility Commission
 Austin, Texas

ORDER ESTABLISHING ACCESS LINE RATES FOR THE CITY OF EL CENIZO

This Order establishes fee per access line rates for the City of El Cenizo. This municipality did not initially participate in the process of establishing fee per access line rates under TEX. LOC. GOV'T CODE Ch. 283. The fee per access line rates for this municipality are shown in Exhibit A, attached hereto. These rates shall be applied prospectively. This Order does not authorize surcharges for recovery of any compensation for right-of-way usage prior to implementation of these rates.

I. Introduction

Under TEX. LOC. GOV'T CODE § 283.055(b),¹ the Public Utility Commission of Texas (Commission) is required to establish: (1) rates per access line by category for each municipality; and (2) the statewide average of those rates per access line by category for each certificated telecommunications provider (CTP). Both of these requirements were met when the Commission adopted municipal rates and CTP statewide averages.²

However, due to either nonparticipation or subsequent incorporation by certain municipalities, the Commission did not set rates for all existing Texas municipalities in May 2000. This Order establishes the fee per access line rates for one newly participating municipality: the City of El Cenizo. This municipality existed in 1998, but chose after May 2000 to participate in the framework established in Ch. 283 for compensation of public right-of-way usage. Exhibit A reflects the maximum rates for

¹ All references hereinafter to statutory sections and chapters relate to the Texas Local Government Code, unless otherwise stated.

² *Implementation of House Bill 1777*, Docket No. 20935, Order (May 3, 2000).

this municipality. This municipality provided city-specific base amounts and access line counts, and elected to use the Commission-established default allocation, pursuant to Ch. 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 as shown in Exhibit A.

II. Findings of Fact

1. Section 283.001(c) includes a legislative finding that the purpose of Ch. 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.
2. 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.
3. Section 283.051(c) provides that fees imposed under Ch. 283 constitute “a municipal fee” or “municipal fees” within the meaning of PURA³ §§ 51.009 and 54.206.
4. 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

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

5. application fees and in-kind services or facilities from CTPs in 1998 within the boundaries of the municipality.
6. Section 283.055(b) requires that the Commission must establish: (1) for each municipality, rates per access line by category; and (2) the statewide average of those rates per access line by category. Consistent with § 283.055(c) 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.
7. 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. Municipalities included their requested allocation as part of the original base amount filings. Section 283.055(d) requires the Commission to establish an allocation of the base amount over the categories of access lines if a municipality did not file its proposed allocation by December 1, 1999. The Commission developed a default allocation of 1:2.3:3.5 in P.U.C. SUBST. R. 26.467(e). This default allocation represents an average of all allocation ratios filed by municipalities.
8. 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.
9. 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 =	$(L1*R1) + (L2*R2) + (L3*R3)$

10. Although eligible to participate, some municipalities did not participate timely in the framework established in Ch. 283 for compensation of public right-of-way usage. The City of El Cenizo has requested that the Commission to establish maximum fee per access line rates. This city existed in 1998, had an established 1998 base amount and access line count, and elected to use the Commission-established default allocation. This municipality has now opted, after May 2000, to participate in the framework established in Ch. 283 for compensation of public right-of-way usage.
11. The Commission has established maximum rates for the City of El Cenizo using the formula established in P.U.C. SUBST. R. 26.467(c), as reflected in Exhibit A.
12. The City of El Cenizo has notified the Commission of its desire to impose the maximum rates.

13. On April 6, 2001, the Commission determined that Ch. 283 does not authorize implementation of surcharges with respect to newly participating cities in the initial establishment of rates.⁴

III. Conclusions of Law

1. The Commission has jurisdiction of this matter under §§ 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 El Cenizo, 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 Ch. 283 and the Commission's rules.
4. Consistent with Finding of Fact No. 12, the Commission finds that no authority exists under Ch. 283 to allow surcharges with respect to newly participating municipalities.

⁴ *Issues Relating to Access Line Reporting and Compensation Pursuant to Substantive Rules 26.465 and 26.467*, Project No. 23379, Open Meeting Tr. at 45 (April 6, 2001).

IV. 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 El Cenizo.
2. CTPs shall not impose surcharges with respect to newly participating municipalities.
3. CTPs shall implement the fee per access line rates as shown in Exhibit A for the City of El Cenizo no later than December 19, 2001.
4. All other relief requested, unless granted herein, is denied.

SIGNED AT AUSTIN, TEXAS the 24th day of September 2001.

PUBLIC UTILITY COMMISSION OF TEXAS



MAX YZAGUIRRE, CHAIRMAN



BRETT A. PERLMAN, COMMISSIONER



REBECCA KLEIN, COMMISSIONER

Exhibit A

Municipality	Category 1	Category 2	Category 3
City of El Cenizo	\$0.61	\$1.39	\$2.11