

PUC 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 §

ORDER

This Order establishes maximum fee per access line rates for four cities: the City of Goodlow; the City of Lowry Crossing; the City of Port Lavaca; and the City of Progreso. These four municipalities did not initially participate in the process of establishing fee per access line rates under Chapter 283, Local Government Code. The maximum fee per access line rates for these municipalities 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 maximum rates.

I. Introduction

Under § 283.055(b), Local Government Code, the Public Utility Commission (Commission) is required to establish: (1) rates per access line by category for each municipality; and (2) the statewide average of those rates per access line by category for each certificated telecommunications provider (CTP). Both of these requirements were met when the Commission adopted municipal rates and CTP statewide averages.¹

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 four newly participating municipalities: the City of Goodlow; the City of Lowry Crossing; the City

¹ *Implementation of House Bill 1777*, Order (May 3, 2000).

of Port Lavaca; and the City of Progreso. These four municipalities existed in 1998, but chose after May 2000 to participate in the framework established in Chapter 283, Local Government Code, for compensation of public right-of-way usage. Exhibit A reflects the maximum rates for these four municipalities. These four municipalities provided city-specific base amounts and access line counts, and elected to use the Commission-established default allocation, pursuant to Chapter 283, Local Government Code, and P.U.C. SUBST. R. § 26.467, *Rates, Allocation, Compensation, Adjustments and Reporting*. These four municipalities have indicated that they choose to impose the maximum rates as shown in Exhibit A.

II. Background

Under § 283.001(c), Local Government Code, the purpose of Chapter 283 is to establish a uniform method for compensating municipalities for the use of a public right-of-way by certificated telecommunications providers that: (1) is administratively simple for municipalities and telecommunications providers; (2) is consistent with state and federal law; (3) is competitively neutral; (4) is nondiscriminatory; (5) is consistent with the burdens on municipalities created by the incursion of certificated telecommunications providers into a public right-of-way; and (6) provides fair and reasonable compensation for the use of a public right-of-way.

Pursuant to § 283.053(b), Local Government Code, 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. When applied to the total number of access lines by category in the municipality, the Commission's rates shall be equal to the base amount, consistent with § 283.055(c), Local Government Code. The specific formula for rate determination is reflected in P.U.C. SUBST. R. 26.467(c).

A major component of the rate calculation is the access line counts provided by each CTP for each municipality in which it operates. Section 283.005, Local Government Code, allows the Commission to collect and compile any information from CTPs and municipalities as is necessary to implement Chapter 283. By January 24, 2000, pursuant to P.U.C. SUBST. R. 26.465(g)(2)(A)(i), all CTPs were required to file an access line count reflecting lines in place as of December 31, 1998. The CTPs operating in these four municipalities submitted access line counts for each of these municipalities by January 24, 2000.

III. Findings of Fact

1. Section 283.001(c), Local Government Code, includes a legislative finding that the purpose of Chapter 283, Local Government Code, is to establish a uniform method for compensating municipalities for the use of a public right-of-way by CTPs that: (1) is administratively simple for municipalities and telecommunications providers; (2) is consistent with state and federal law; (3) is competitively neutral; (4) is nondiscriminatory; (5) is consistent with the burdens on municipalities created by the incursion of certificated telecommunications providers into a public right-of-way; and (6) provides fair and reasonable compensation for the use of a public right-of-way.
2. Section 283.051(a), Local Government Code, provides that a CTP that provides telecommunications services within a municipality is required to pay as compensation to a municipality for use of the public rights-of-way in the municipality only the amount determined by the Commission under § 283.055, Local Government Code.
3. Section 283.051(c), Local Government Code, provides that fees imposed under Chapter 283, Local Government Code, constitute “a municipal fee” or “municipal fees” within the meaning of PURA § § 51.009 and 54.206.

4. Section 283.053(b), Local Government Code, 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.
5. Section 283.055(b), Local Government Code, 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), Local Government Code, when applied to the total number of access lines by category in the municipality, the Commission's rates shall be equal to the base amount.
6. Section 283.055(d), Local Government Code, requires that a municipality that wants to effect an allocation of the base amount over specific access line categories to be assessed rates must notify the Commission of the desired allocation. Municipalities included their requested allocation as part of the original base amount filings. Section 283.055(d), Local Government Code, requires the Commission to establish an allocation of the base amount over the categories of access lines if a municipality did not file its proposed allocation by December 1, 1999. The Commission developed a default allocation of 1:2.3:3.5 in P.U.C. SUBST. R. 26.467(e). This default allocation represents an average of all allocation ratios filed by municipalities.
7. 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.

8. P.U.C. SUBST. R. 26.467(c) sets out the formula the Commission shall use to develop access line rates, by category, as follows:

B =	Total base amount for 1998.
A1 =	Allocation by percentage to Category 1 access lines.
A2 =	Allocation by percentage to Category 2 access lines.
A3 =	Allocation by percentage to Category 3 access lines.
L1 =	Number of access lines in Category 1.
L2 =	Number of access lines in Category 2.
L3 =	Number of access lines in Category 3.
R1 =	Fee per access line rate for Category 1.
R2 =	Fee per access line rate for Category 2.
R3 =	Fee per access line rate for Category 3.
R1 =	$(A1*B)/L1$
R2 =	$(A2*B)/L2$
R3 =	$(A3*B)/L3$
B =	$(L1*R1) + (L2*R2) + (L3*R3)$

9. Although eligible to participate, some municipalities did not participate timely in the framework established in Chapter 283, Local Government Code, for compensation of public right-of-way usage. Four municipalities, the City of Goodlow, the City of Lowry Crossing, the City of Port Lavaca, and the City of Progreso, have come forward requesting the Commission to establish maximum fee per access line rates. All of these cities existed in 1998, had an established 1998 base amount and access line count, and elected to use the Commission-established default allocation. These four municipalities have now opted, after May 2000, to participate in the framework established in Chapter 283, Local Government Code, for compensation of public right-of-way usage.

10. The Commission has established maximum rates for these four municipalities using the formula established in P.U.C. SUBST. R. 26.467(c), as reflected in Exhibit A.
11. On April 6, 2001, the Commission determined that Chapter 283, Local Government Code, does not authorize implementation of surcharges with respect to newly participating cities in the initial establishment of rates.²

IV. Conclusions of Law

1. The Commission has jurisdiction of this matter under §§ 283.005, 283.051, 283.055, and 283.058, Local Government Code, and under §§ 14.001, 14.002, 14.003, 52.002 of the Public Utility Regulatory Act (PURA), codified at TEX. UTIL. CODE ANN. § § 11.001 – 64.158 (Vernon 1998 & Supp. 2000).
2. The fee per access line rates established by the Commission, when applied to the total number of access lines by category in each affected municipality, are equal to that municipality's base amount.
3. The fee per access line rates, as established by the Commission, accepted by the municipalities, and shown in Exhibit A, are consistent with, and meet the requirements of, Chapter 283, Local Government Code, and the Commission's rules.
4. Consistent with Finding of Fact 11, the Commission finds that no authority exists under Chapter 283, Local Government Code, to allow surcharges with respect to newly participating municipalities.

² See, Project Number 23379 – *Issues Relating to Access Line Reporting and Compensation Pursuant to Substantive Rules 26.465 and 26.467*, Open Meeting Transcript at 45.

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 listed municipalities.
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 listed municipalities, no later than July 1, 2001.
4. All other relief requested, unless granted herein, is denied.

SIGNED AT AUSTIN, TEXAS the _____ day of May, 2001.

PUBLIC UTILITY COMMISSION OF TEXAS

PAT WOOD, III, CHAIRMAN

BRETT A. PERLMAN, COMMISSIONER

Exhibit A

Municipality	Category 1	Category 2	Category 3
City of Goodlow	\$0.34	\$0.78	\$1.15
City of Lowry Crossing	\$1.12	\$2.57	\$3.89
City of Port Lavaca	\$0.96	\$2.20	\$3.35
City of Progreso	\$0.97	\$2.22	\$3.38