

PROJECT NO. 23956

ACCESS LINE RATES FOR TEXAS § PUBLIC UTILITY COMMISSION
CITIES PURSUANT TO LINE COUNT §
ERRORS FROM CERTIFICATED § OF TEXAS
TELECOMMUNICATIONS §
PROVIDERS §

ORDER APPROVING ACCESS LINE RATES FOR VILLAGE OF SALADO

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 averages¹. CTPs were required to implement the Commission-established final rates no later than June 1, 2000.

Upon notice from two municipalities regarding unusual changes in Sprint's quarterly access line counts, Commission Staff contacted Sprint on September 26, 2002. On November 4, 2002, Sprint admitted to the Commission that its initial lines counts for its two ILECs, United Telephone Company (CCN No. 40039) and Central Telephone Company (CCN No. 40096), were erroneous. The Commission approved Orders correcting the maximum and setting city-preferred rates for all affected municipalities identified by Sprint other than the Village of Salado in November 2003.² The Village of Salado was inadvertently excluded at that time because it relied on subsequent, rather than initial, access line counts to establish its Base Amount.

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

² *Access Line Rates for Texas Cities Pursuant to Line Count Errors from Certificated Telecommunications Providers*, Project No. 23956, Order Approving Maximum Rates for Cities Affected by Erroneous Initial Line Counts from Sprint Communications Company d/b/a United Telephone Company and Central Telephone Company (November 19, 2003) and 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).

II. Background

Under § 283.001(c), Local Government Code, 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 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 § 283.055(a), Local Government Code, the Commission is required to establish not more than three categories of access lines for statewide use. The three categories of access lines — residential, non-residential, and point-to-point—have been established by P.U.C. SUBST. R. 26.461, which was adopted by the Commission on October 21, 1999. 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). The Commission-established rates are maximum rates, pursuant to the methodology shown in P.U.C. SUBST. R. 26.467(g)(1)(3).

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.

A major component of the rate calculation is the access line counts provided by each CTP for each municipality in which they operate. 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 of the Local Government Code (HB 1777). By January 24, 2000, pursuant to P.U.C. SUBST. R.

26.465(g)(2)(A), all CTPs were required to file an access line count as of December 31, 1998. 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.

The Commission has allowed Sprint Communications Company to submit these corrected line counts in order to ensure that the corrected fee per access line rates, when applied to the access line counts, result in the municipal base amount, consistent with § 283.055(c), Local Government Code.

The Village of Salado's original allocation ratio was 1:2.95:4.055, which gave the Village of Salado rates of \$1.36 in category 1, \$4.00 in category 2, and \$5.50 in category 3. The Village of Salado chose to set city-preferred rates at that time of \$1.00 in category 1, \$4.00 in category 2, and \$5.50 in category 3. Under the CPI adjustment of 2003, the Village of Salado's most recent rates were \$1.03 in category 1, \$4.08 in category 2, and \$5.61 in category 3.

In discussions regarding the corrected access line counts, the Village of Salado indicated its preference to change its allocation ratio and adjust its rates from its previous city-preferred rates to its new maximum access line rates, as shown in Exhibit A. The Village of Salado's corrected maximum rates were modified to reflect the corrected access line counts, the new allocation ratio, and the 2002 and 2003 CPI adjustments.

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 283.055(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 for each CTP. 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.
 5. 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.

6. The Commission finds that allocations resulting in rates of more than \$2 for Category 1, more than \$4 for Category 2, or more than \$10 for Category 3 appear high. Municipalities are urged, but not required, to consider allocation formulas resulting in rates below these levels.
7. P.U.C. SUBST. R. 26.465(g)(2)(A) required all CTPs to file an access line count 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. As part of the Commission's determination of fees under § 283.055, Local Government Code, the Commission was also required to develop the statewide average of municipalities' rates per access line by category, for each CTP.
10. The access line counts originally submitted by Sprint Communications Company were erroneous. An accurate access line count is essential to ensure that the rates, when applied to the total number of access lines, equal the base amount, pursuant to § 283.055(c), Local Government Code.
11. Because corrections were made to original access line counts used to calculate fee per access line rates, it is necessary to re-calculate the fee per access line rates for cities whose rates were affected by corrected access line counts.
12. The Commission ordered in the May 8, 2001 Open Meeting that issues related to past due compensation that may result from erroneous line counts shall be worked out between municipalities and CTPs.³
13. 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.⁴

³ Open Meeting Tr. at 214-215 (May 8, 2001).

⁴ Open Meeting Tr. at 214-215 (May 8, 2001).

14. The Village of Salado indicated its intention to modify its allocation ratio and preference to apply its maximum access line rates as its city-preferred rates. The new allocation ratio and corrected maximum access line rates are attached.

IV. Conclusions of Law

1. The Commission has jurisdiction of this matter under §§ 283.005, 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 revised fee per access line maximum rates established by the Commission, when applied to the total number of access lines by category in the Village of Salado, are equal to that municipality's base amount.
3. The revised fee per access line maximum rates, as established by the Commission and shown in Exhibit A, are consistent with, and meet the requirements of Chapter 283, Local Government Code, and the Commission's rules.
4. Chapter 283, Local Government Code, does not authorize CTPs to pass-through to customers any surcharges or refunds relating to compensation past-due to a municipality.

V. Ordering Paragraphs

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

1. The revised fee per access line maximum rates and city-preferred rates for the Village of Salado, as affected by the new allocation ratio and adjustments to its original access line count, shall be as shown in Exhibit A, effective January 1, 2004.

2. Maximum rates for all other municipalities not reflected in Exhibit A shall remain as previously approved by this Commission.
3. CTPs shall not pass-through to the customer any surcharges or refunds relating to compensation past-due to a municipality.
4. All other relief requested, unless granted herein, is denied.

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

PUBLIC UTILITY COMMISSION OF TEXAS

JULIE PARSLEY, COMMISSIONER

PAUL HUDSON, COMMISSIONER

EXHIBIT A

Village of Salado	Cat 1	Cat 2	Cat 3
Maximum (and City-preferred) Rates	\$1.22	\$4.38	\$6.08
New Allocation Ratio	1	3.6	5