

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.

Subchapter F. REGULATION OF TELECOMMUNICATIONS SERVICE.

§26.134. Market Test to be Applied in Determining if Markets with Populations Less than 30,000 Should Remain Regulated on or After January 1, 2007.

- (a) **Purpose.** The purpose of this section is to establish the market tests to be applied in determining if markets with populations less than 30,000 should remain regulated after January 1, 2007.
- (b) **Application.** This section applies to all incumbent local exchange companies (ILECs), as defined in §26.5 of this title (relating to Definitions).
- (c) **Market Test.** Markets as defined in §65.002 of PURA with a population of less than 30,000 shall be deregulated only if the ILEC providing services to such a market submits evidence demonstrating that the population in the market is less than 30,000 and in addition to the ILEC there are three separate competitors:
 - (1) of which at least one competitor is an entity providing residential telephone service in the market using facilities that the entity or its affiliate owns; and
 - (2) of which at least two competitors must be from two different categories of the following:
 - (A) a telecommunications provider that holds a certificate of operating authority or service provider certificate of operating authority and provides residential local exchange telephone service in the market;
 - (B) a provider in that market of commercial mobile service as defined by Section 332(d), Communications Act of 1934 (47 U.S.C. Section 151 et. Seq.), Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993 (Pub. L. No. 103-66), that is not affiliated with the incumbent local exchange company; and
 - (C) a satellite telecommunications provider certified as an eligible telecommunications carrier for the entire market pursuant to §26.418 of this title (relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds.)
- (d) **Rural Exemption Waiver.** In the event that an ILEC seeking deregulation of a market area with a population of less than 30,000 has a rural exemption as provided for in Section 251(f)(1) "Exemption For Certain Rural Telephone Companies" of the Communications Act of 1934, a petition for the removal of that rural exemption for that market must be approved by the commission in order for the market in question not to remain regulated. In addition, any such market must meet the conditions of the market test set forth in subsection (c) of this section.
- (e) **Timing.**
 - (1) Markets shall be deregulated on January 1, 2007 only if the ILEC providing service to such a market(s) submits evidence on or before August 1, 2006 in compliance with subsection (c) of this section and, if applicable, subsection (d) of this section.
 - (2) After July 1, 2007 an ILEC petitioning for deregulation of a market with a population of less than 30,000 shall submit with its petition the evidence in compliance with subsection (c) of this section and, if applicable, subsection (d) of this section.