

**CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.**

**Subchapter J. COSTS, RATES AND TARIFFS.**

**§26.223. Prohibition of Excessive COA/SPCOA Usage Sensitive Intrastate Switched Access Rates.**

- (a) **Purpose.** The purpose of this section is to implement Public Utility Regulatory Act (PURA) §52.155, which addresses the usage sensitive intrastate switched access rates that can be charged by a telecommunications utility that holds a certificate of operating authority (COA) or a service provider certificate of operating authority (SPCOA) (COA/SPCOA).
- (b) **Applicability.** This section applies to usage sensitive intrastate switched access rates of COA/SPCOA holders, including but not limited to, originating and terminating carrier common line (CCL), originating and terminating local switching (LS), originating and terminating switched transport (TR), originating and terminating tandem switching (TS), and originating and terminating tandem switched transport (TST).
- (c) **Requirements for COA/SPCOA usage sensitive intrastate switched access rates.** A telecommunications utility that holds a COA or a SPCOA may not charge a higher aggregate amount, including any rate elements not charged by the holder of the certificate of convenience and necessity (CCN), for originating or terminating usage sensitive intrastate switched access than the prevailing rates charged by the CCN holder or the holder of a COA issued under Chapter 65 in whose territory the call originated or terminated unless:
- (1) the commission specifically approves the higher rate; or
  - (2) subject to commission review, the telecommunications utility establishes statewide average composite originating and terminating usage sensitive intrastate switched access rates based on a reasonable approximation of traffic originating and terminating between all holders of certificates of convenience and necessity in this state.
- (d) **Governance of Switched Access Rates under PURA Chapter 65.** Notwithstanding subsection (c), PURA Chapter 65 governs the switched access rates of a company that holds a COA issued under PURA Chapter 65.
- (e) **Statewide average composite rates.** Weighted statewide average composite usage sensitive intrastate switched access rates will be developed based upon the submission of CCN holders' compliance filings pursuant to subsection (g) of this section.
- (1) **Methodology.** The commission shall use the following information and methodology for development of the weighted statewide average composite usage sensitive intrastate switched access rates separately for each originating and for each terminating rate element category in subsection (g)(1) - (6) of this section:
    - (A) Each CCN holder's individual rate elements' rates will be multiplied by the total actual minutes of use (MOUs) for that rate element, producing a total revenue for each rate element for each CCN holder.
    - (B) Revenues for each CCN holder's rate element will be added to create a statewide total revenue for that rate element.
    - (C) The actual MOUs for each CCN holder's rate element will be added to create a statewide total actual MOUs for that rate element.
    - (D) The statewide total revenue for that rate element will be divided by the statewide total actual MOUs for that rate element, producing a weighted statewide average composite usage sensitive intrastate switched access rate for that switched access rate element.
    - (E) Additional revenues submitted under subsection (g)(8) of this section for monthly rate elements associated with switched access shall be converted to MOU rates using the local switching MOUs provided by the CCN holder. The converted MOU rates shall be used to revise the weighted statewide average composite usage

**CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.**

**Subchapter J. COSTS, RATES AND TARIFFS.**

**§26.223(e)(1)(E) continued**

sensitive intrastate switched access rates calculated pursuant to subparagraph (D) of this paragraph.

- (2) **Re-calculation.**
- (A) The commission shall re-calculate the weighted statewide average composite usage sensitive intrastate switched access rates annually until June, 2010 based upon the submissions of the CCN holders, as required in subsection (g) of this section. The commission shall endeavor to complete such re-calculation by November 15 of each year.
  - (B) Any certificated telecommunications utility may file a petition requesting that the commission re-calculate the weighted statewide average composite usage sensitive intrastate switched access rates at any time. The commission shall grant the petition for re-calculation if it concludes that the petition has provided just cause for re-calculation.
  - (C) As provided in subsection (g) of this section, the commission may also require compliance submissions by CCN holders for re-calculation of the weighted statewide average composite usage sensitive intrastate switched access rates as appropriate because of significant changes in usage sensitive intrastate switched access rates or in response to the request of affected parties, as specified in subparagraph (B) of this paragraph.
  - (D) After June 2010, the commission shall re-calculate the weighted statewide average composite usage sensitive intrastate switched access rates biennially. The commission shall endeavor to complete such re-calculation by November 15.
- (f) **Approval of higher rates.**
- (1) A COA/SPCOA holder seeking approval of originating and/or terminating usage sensitive intrastate switched access rates that in the aggregate, including any rate elements not charged by the CCN holder, are higher than the aggregate of the originating and/or terminating usage sensitive switched access rate elements charged by the CCN holder in the COA/SPCOA's territory may do so by filing an application with the commission subject to the procedures outlined in Procedural Rule §22.33 of this title (relating to Tariff Filings). The COA/SPCOA's application must provide, at a minimum, the following information:
    - (A) Cost justification for each rate element.
    - (B) Rationale for implementation of the higher rate for each rate element.
  - (2) A COA/SPCOA holder's application must address all of the applicable switched access rate elements in subsection (b) of this section.
  - (3) The commission shall publish notice of the application in the *Texas Register*.
- (g) **Requirement for CCN holders compliance submissions.** Until June, 2010, all CCN holders must provide the following intrastate data to the commission as a compliance filing on an annual basis; and as of June, 2010 and thereafter on a biennial basis, by September 15:
- (1) The current tariffed rate for originating and terminating CCL.
  - (2) The current tariffed rate for originating and terminating LS.
  - (3) The current tariffed rate for originating and terminating TR.
  - (4) The current tariffed rate for originating and terminating TS.
  - (5) The current average per minute rate for originating and terminating TST.
  - (6) The current originating and terminating tariffed rate(s) for any other usage sensitive intrastate switched access rate element(s).

**CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS.**

**Subchapter J. COSTS, RATES AND TARIFFS.**

**§26.223(g) continued**

- (7) The total actual originating and terminating MOUs for the most recent 12-month period (August 1 through July 31) for each rate element in paragraphs (1) – (6) of this subsection that is billed on an MOU basis.
  - (8) The total revenues for the most recent 12-month period (August 1 through July 31) received from any switched access monthly rate element used to transport or switch the access traffic listed in paragraphs (1) - (6) of this subsection that may be specifically attributable to the element identified (*e.g.*, local switching, transport).
- (h) **Requirements of COA/SPCOA holders compliance submissions.**
- (1) No later than 20 days after the effective date of the commission order re-calculating the weighted statewide average composite usage sensitive switched access rates, COA/SPCOA holders shall:
    - (A) file an application under subsection (f) of this section; or
    - (B) file compliance tariffs/price lists to be effective 10 days from the filing date of the compliance tariffs/price lists containing originating and terminating usage sensitive intrastate switched access rates that do not exceed the prevailing rates charged by the CCN holder in each territory in which the COA/SPCOA holder operates; or
    - (C) file compliance tariffs/price sheets with originating and terminating usage sensitive intrastate switched access rates that do not exceed the re-calculated weighted statewide average composite usage sensitive switched access rates established by the commission to be effective 10 days from the filing date of the compliance tariffs/price sheets; or
    - (D) file a letter with the commission demonstrating that no rate revisions are necessary in order to comply with this section.
  - (2) If a COA/SPCOA holder establishes usage sensitive intrastate switched access rates pursuant to paragraph (1)(B) of this subsection and the underlying CCN holder(s) whose rates were the basis for the COA/SPCOA holder's usage sensitive intrastate switched access rates are modified, no later than 20 days after said CCN holder's rates are modified, the COA/SPCOA holder shall:
    - (A) file an application under subsection (f) of this section; or
    - (B) file compliance tariffs/price lists to be effective 10 days from the filing date of the compliance tariffs/price lists containing originating and terminating usage sensitive intrastate switched access rates that do not exceed the prevailing rates charged by the CCN holder in each territory in which the COA/SPCOA holder operates; or
    - (C) file compliance tariffs/price sheets with originating and terminating usage sensitive intrastate switched access rates that do not exceed the most recent commission established weighted statewide average composite usage sensitive switched access rates established by the commission to be effective 10 days from the filing date of the compliance tariffs/price sheets; or
    - (D) file a letter with the commission demonstrating that no rate revisions are necessary in order to comply with this section.